

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
TO THE
GOVERNOR OF THE STATE
OF ALABAMA

FOR THE PERIOD
FROM OCTOBER 1, 1932
TO SEPTEMBER 30, 1934

THOMAS E. KNIGHT, JR.	Attorney General
JUDGE A. A. EVANS	First Assistant Attorney General
JOHN J. HAYNES	Assistant Attorney General
FRONTIS H. MOORE	Assistant Attorney General
JAMES L. SCREWS	Assistant Attorney General
THOMAS SEAY LAWSON	Assistant Attorney General
ALBERT A. CARMICHAEL	Assistant Attorney General
(To Alabama Public Service Commission)	
MATT H. MURPHY	Special Assistant Attorney General
(On Collection Delinquent Taxes, etc.)	
MRS. ALICE K. BALDWIN	Secretary
MISS NELL M. JOHNSON	Stenographer
MRS. J. W. KIGHT	Stenographer
MISS EFFIE CRITTENDEN	Temporary Stenographer

ATTORNEYS GENERAL OF ALABAMA

1819-1934

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Pelham	1836
Lincoln Clarke	1838
Matthew Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1850
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907
Robert C. Brickell	1911
William L. Martin, Jr.	1915
F. Loyd Tate	1918
Emmett S. Thigpen	1918
J. Q. Smith	1919
Harwell G. Davis	1921
Charlie C. McCall	1927
Thomas E. Knight, Jr.	1931

Note: For many years, and until Feb. 20, 1866, the law required the Attorney General to act as solicitor for the circuit in which the seat of government was located.

LIST OF CIRCUIT JUDGES AND SOLICITORS

1932-1934

1st Circuit—Choctaw, Washington and Clarke Counties. Judge T. J. Bedsole, Grove Hill, (died Oct. 21, 1933); Solicitor Joe M. Pelham, Jr., Chatom, appointed Judge Oct. 26, 1933; Solicitor F. E. Poole, Grove Hill.

2nd Circuit—Butler, Crenshaw and Lowndes Counties. Judge A. E. Gamble, Greenville; Solicitor H. P. Rogers, Greenville.

3rd Circuit—Barbour, Bullock, Russell and Dale Counties. Judge J. S. Williams, Clayton; Solicitor Geo. W. Andrews, Jr., Union Springs.

4th Circuit—Bibb, Dallas, Hale, Perry and Wilcox Counties. Judge John Miller, Camden; Solicitor Jos. H. James, Greensboro.

5th Circuit—Chambers, Macon, Randolph, Tallapoosa and Lee Counties. Judge W. B. Bowling, LaFayette; Judge Clyde H. Vann, Roanoke (died Mar. 14, 1934); Judge T. D. Samford, Jr., Opelika; Solicitor R. H. Powell, Jr., Tuskegee.

6th Circuit—Tuscaloosa County. Judge Henry B. Foster, Tuscaloosa; Solicitor Edward DeGraffenried, Tuscaloosa.

7th Circuit—Calhoun, Cleburne and Talladega Counties. Judge R. B. Carr, Anniston; Judge W. B. Merrill, Anniston; Solicitor J. B. Sanford, Talladega.

8th Circuit—Cullman, Lawrence, Limestone and Morgan Counties. Judge Jas. E. Horton, Athens; Judge W. W. Callahan, Decatur; Solicitor Wade Wright, Decatur.

9th Circuit—Cherokee, DeKalb, Marshall and Jackson Counties. Judge A. E. Hawkins, Fort Payne; Solicitor H. G. Bailey, Boaz.

10th Circuit—Jefferson County. Judge Richard V. Evans, Birmingham; Judge C. B. Smith, Birmingham; Judge H. P. Heflin, Birmingham; Judge Romaine Boyd, Birmingham; Judge Joe C. Hail, Birmingham (died 1934, succeeded by Judge Fritz Thompson); Judge Roger Snyder, Birmingham; Judge Gardner Goodwyn, Bessemer; Judge John Denson, Birmingham; Judge John P. McCoy, Birmingham; Judge William Walker, Birmingham; Judge J. Russell McElroy, Birmingham; Solicitor Geo. Lewis Bailes, Birmingham.

11th Circuit—Colbert, Franklin and Lauderdale Counties. Judge J. Fred Johnson, Jr., Florence; Solicitor R. T. Simpson, Jr., Florence.

12th Circuit—Coffee and Pike Counties. Judge W. L. Parks, Troy; Solicitor E. C. Orme, Troy.

13th Circuit—Mobile County. Judge J. Blocker Thornton, Mobile; Judge Claude A. Grayson, Mobile; Judge Joel W. Goldsby, Mobile; Solicitor Bart B. Chamberlain, Mobile.

14th Circuit—Walker, Winston, Fayette, Lamar and Marion Counties. Judge R. L. Blanton, Jasper; Judge Ernest Lacy, Jasper; Solicitor B. G. Wilson, Jasper.

15th Circuit—Montgomery County. Judge Leon McCord, Montgomery; Judge Walter B. Jones, Montgomery; Solicitor W. T. Seibels, Montgomery.

16th Circuit—Blount, Etowah and St. Clair Counties. Judge Woodson J. Martin, Gadsden; Judge O. A. Steele, Gadsden (died Oct. 1933); Judge Harry Disque, Gadsden; Solicitor W. G. Rains, Gadsden.

17th Circuit—Marengo, Greene, Pickens and Sumter Counties. Judge Ben F. Elmore, Demopolis; Solicitor W. R. Kimbrough (died Jan. 22, 1934); Solicitor Geo. O. Miller, Linden.

18th Circuit—Clay, Shelby and Coosa Counties. Judge E. P. Gay, Ashland; Solicitor A. L. Hardegree, Ashland.

19th Circuit—Autauga, Chilton and Elmore Counties. Judge Lloyd Tate, Wetumpka; Solicitor Winston Huddleston, Wetumpka.

20th Circuit—Henry and Houston Counties. Judge H. A. Pearce, Dothan; Solicitor J. N. Mullins (resigned); Solicitor J. Hubert Farmer, Dothan.

21st Circuit—Baldwin, Conecuh, Escambia and Monroe Counties. Judge F. W. Hare, Monroeville; Solicitor Hugh Caffey, Jr., Brewton.

22nd Circuit—Covington and Geneva Counties. Judge Emmett Thigpen, Andalusia; Solicitor Robt. S. Reid, Andalusia.

23rd Circuit—Madison County. Judge Paul Speake, Huntsville; Solicitor Jas. H. Pride, Huntsville.

OPINIONS

October 1, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

Auditor issuing warrants against the State Treasury subsequent to September 30, 1932.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 1, 1932, in which you inquire whether or not you may continue to issue warrants unless the State Treasury has in it the money to pay the same.

I am of the opinion that you may issue warrants for indebtedness which accrued prior to the passage of the Fletcher Bill which prohibits you issuing warrants for the fiscal year beginning October 1, 1932. It must be borne in mind that the obligations occurred prior to the end of the fiscal year ending September 30, 1932. It is perfectly obvious that in the new order of auditing and paying claims against the State of Alabama that all of the incongruities could not have been foreseen when the Legislature enacted the most recent legislation. Likewise, should you certify into the Treasury of the State as of the fiscal year ending September 30, 1932, receipts which were due the State of Alabama to be by you certified into the Treasury of the State.

I do not think that the Legislature intended to make it impossible for the Auditor of the State to clearly account for his receipts and expenditures including claims against the State accruing prior to the end of the fiscal year. For this purpose, it is my opinion that the Auditor may continue to keep account of the receipts for the fiscal year of 1932 ending September 30th and of the claims against the State for that fiscal year, and that he should issue warrants for such claims when the same are presented, if not presented until after October 1, 1932, providing the same accrued prior to September 30, 1932, the end of the fiscal year.

You should not, under the Fletcher Bill, issue a warrant against the Treasury of the State for a claim accrued since October 1st unless there is money in the Treasury. How you are to ascertain whether or not there is money in the Treasury is a question between you and the State Treasurer. In view of the new law it would seem that you should be informed as to the moneys in the Treasury to the credit of the various accounts.

The Fletcher Bill does not, in my opinion, prohibit your issuing warrants to Members of the Legislature and their clerks where their claims for per diem and expenses accrued prior to September 30, 1932. However, after this

date it appears that the Legislature and its clerks are likewise affected by the Fletcher Bill as are other persons with claims against the State.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 4, 1932.

Hon. W. Cooper Green, Member,
House of Representatives,
CAPITOL.

Citizenship—One who has been pardoned and had citizenship restored by the Governor under Section 365, Code of 1923, is eligible to hold office in State, county or municipality in Alabama.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 14, 1932 in which you request my opinion as to whether or not one who has served a term in the penitentiary and who has obtained his civil and political rights is eligible to make application and receive a position with the State, county or a municipality in Alabama.

I am of the opinion that your inquiry should be answered in the affirmative.

Section 365, Code of Alabama, 1923 provides as follows:

365. Pardon restores citizenship and right to vote.—Any person who is disqualified from voting by reason of conviction of any of the offenses mentioned in Section 364 of this Code, except treason, whether the conviction was had in a state or federal court, and who has been pardoned, may be restored to his or her citizenship with right to vote by the Governor, approved by the board of pardons and specially expressed in the pardon.

It necessarily follows that one whose citizenship with the right to vote has been restored, in compliance with the above section, is eligible to make application and receive a position with the State, county or municipality in Alabama.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 4, 1932.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Appropriation of rural school house fund cannot be made for indebtedness that has been paid.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 8, 1932 in which you state the following facts:

"On March 8, 1932, Superintendent O. C. Weaver, of Brewton, filed in this office an application for state aid in the payment of a \$5,000 debt on the W. S. Neal High School Building in his county. The records show that this debt was made April 1, 1928, and was due April 1, 1932. This application was returned to Superintendent Weaver with the request that it be held until just before the redistribution period, namely September 1 of this year. When the application was refiled a request was made of Superintendent Weaver for a certificate certifying that the debt had not been paid. This, Superintendent Weaver did not furnish. It should be understood that Superintendent Weaver had the opportunity to apply for state aid in liquidating this indebtedness at the redistribution period in 1931."

You request my opinion as to whether or not under Act No. 370, H. R. 350, approved July 8, 1931, (General Acts, 1931, page 435) you would be justified in approving an application for aid on indebtedness after the debt has been paid.

I am of the opinion that your inquiry should be answered in the negative. Section 1 of the act in question is as follows:

"Section 1. That where County Boards of Education have incurred debts, evidence by warrants or otherwise, in the erection, repair or equipment of rural school houses according to plans and regulations set out in Sections 370 to 386 of the Alabama School Code of 1927, **it shall be lawful for the State Board of Education to appropriate rural school house funds to such counties for the purpose of paying such indebtedness.** provided that there are no new buildings or equipment erected or installed in any county to consume such county's apportionment or share of such rural school house funds for any fiscal year."

The section specifically provides for appropriation of rural school house funds **for the purpose of paying such indebtedness.**

"Indebtedness" means a state of being indebted or a sum owed.—
4 Words and Phrases 202 (3).

It naturally follows that if there is nothing owed there is no indebtedness for which an appropriation could be made.

"Indebtedness incurred" as used in said act includes the principal owed plus the interest accrued at the time said act went into effect, i.e., July 8, 1931. **Opinions of Attorney General**, Book 6, p. 129 (Office Edition).

I am of the opinion that the purpose of the act in question is to pay only that part of the "indebtedness incurred" as above defined, that remains unpaid at the time the appropriation is made and not the total amount of said indebtedness. To hold otherwise would allow money to be appropriated for the payment of a debt that no longer exists, having the effect of appropriating money for purposes other than authorized by said Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 4, 1932.

Hon. E. L. McConnell,
Clerk of the Circuit Court,
Florence, Lauderdale County, Alabama.

Mileage for witness for whom a subpoena has been issued but not served, should be paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 24, 1932, in which you request my opinion as follows:

"At the March Term of the Lauderdale County Grand Jury an indictment was returned against Will Allen charging him with the offense of manufacturing liquor. Prior to that time Deputy Sheriff, G. O. Grubb and United States Prohibition Officer J. B. Reed had arrested the defendant while in the act of manufacturing whiskey.

"The case was set for trial in the Circuit Court on September 21st, this year. Between the time of the indictment and the date the case was set for trial, Officer Grubb moved from Florence to make Gadsden

his home. He knew all along that he was a material witness for the State in this case and expected to be served with a subpoena. On Sunday, September 18th, Mr. Grubb met Mr. Reed in Gadsden, and knowing that the Circuit Court for this County was in session asked him if he knew why no subpoena had been served upon him as a witness for the State. Officer Reed thereupon informed Mr. Grubb that he had just come from Florence where he had talked to a Deputy Sheriff and was told by the Deputy Sheriff that a subpoena had been mailed to Mr. Grubb at Gadsden. Thereupon, on the following Monday, without further awaiting the subpoena, Mr. Grubb came to Florence and upon his arrival in Florence was served with the subpoena which he had been informed was mailed. After the conclusion of the trial, in claiming his attendance, Mr. Grubb also claimed mileage from Gadsden to Florence. I have not paid the claim and am withholding payment of the mileage pending an answer from you as to whether or not I am authorized to pay the mileage claimed in the case."

It is my opinion Mr. Grubb should be paid his mileage. He acted in good faith when he heard that a subpoena was out for him, and had actually been mailed. And without waiting for a subpoena to be served, went at once to Florence to attend court. Therefore, as said above, I am of the opinion that he should be given his mileage in connection with his per diem.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 20, 1932.

Hon. Robert Hudson,
Superintendent of Education.
Tuscombua, Alabama.

Chauffeurs' licenses—Operators of school busses.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 4, 1932 in which you request a ruling on the question of paying chauffeurs' licenses for driving school trucks in the county.

This office has repeatedly held that the operator of a school bus is subject to a chauffeur's license.—Opinions Attorney General, Book 3, pages 13, 80 (Off. Ed.).

Biennial Report Attorney General, 1928-30, pp. 75, 353, 371, 475, and 706;
Biennial Report Attorney General, 1926-28, p. 155.

I know of no authority of law whereby the county is authorized to pay said license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 21, 1932.

Hon. H. H. Montgomery,
Superintendent of Banks,
CAPITOL.

1. The act of the Legislature approved September 20, 1932 is not in conflict with any Federal or State Constitutional provision in respect of receiverships already in existence or banks already in voluntary liquidation.
2. There is no limitation of amount of collateral which can be pledged by the Superintendent of Banks for each dollar of money borrowed or other like restrictions, except that the court in which liquidation is being controlled may order.
3. Stockholders who have paid in full for their shares in a corporation organized under the laws of Alabama have no further liability.
4. There is no legal reason why the corporation cannot secure a general lien on all the assets of the estate as provided in paragraph 10 of the receiver's application, although such assets are not specifically put in possession of the Finance Corporation, provided the court having jurisdiction of the settlement or liquidation of the estate does not order otherwise.
5. The assets of savings or other departments need not be kept separate so as to require individual applications for each department of the bank.
6. One of the elements of protecting and preserving the assets of a bank consists in paying the taxes and secured claims of such bank which constitute liens on such assets.

Opinion by Assistant Attorney General Evans.

Dear Sir:

This acknowledges receipt of your letter of October 10, 1932. You ask my opinion in regard to the act of the Legislature of Alabama approved September 20, 1932, empowering the Superintendent of Banks to borrow money from the Reconstruction Finance Corporation on behalf of a closed bank or trust company. You ask as follows:

"(1) Is this Act in conflict with any Federal or State Constitutional provision, particularly in respect of receiverships already in existence or banks already in voluntary liquidation?

"(2) Is there any limitation on the amount of collateral which can be pledged by the Superintendent of Banks for each dollar of borrowed money, or other like restrictions?

"(3) Is the stockholders' liability preserved for the benefit of the Corporation in case of a loan to a closed Alabama bank under this Act? Is it material whether the bank is in voluntary or involuntary liquidation?

"(4) Is there any legal reason why the Corporation cannot secure a general lien on all the assets of the estate as provided in paragraph 10 of the Receiver's application, although such assets are not specifically put into our possession?

"(5) Must the assets of savings and other departments be kept separate so as to require individual applications for each department of a bank? If so, may the Corporation apply income from the collateral pledged to secure the loan of a particular department towards the payment of principal or interest of that loan, or does such income, as had been held in at least one State, belong to the bank's general assets and, therefore, not subject to such application? Furthermore, if the income from a particular department cannot be applied to the payment of principal and interest of the loan of that department, may the Corporation safely accept payment of interest or principal from the Superintendent of Banks without inquiring as to the source of such funds and without risk in the event the funds so applied come from an improper source.

"(6) Does the 'protecting and preserving' of assets as contemplated by the Act include the freeing of assets from tax liens or the payment of secured claims?"

In reply to your question (1) will say that in my opinion, it is not.

In reply to question (2) will say that, in my opinion, there are no limitations except that the court in which such receivership or liquidation is being managed might place a limitation.

In answer to question (3) will say that under the laws of Alabama there is no double liability on the stockholders for the debts of the Corporation.

In reply to question (4) will say that, in my opinion, there is no legal reason why the Finance Corporation cannot secure a general lien on all the assets of the estate provided the same is approved by the court having jurisdiction of the liquidation of the estate, although such assets are not specifically put in the possession of such Finance Corporation.

We have no copy of the receiver's application and are not informed as to the full contents of paragraph 10 of the receiver's application.

In reply to question (5) will say that saving deposits are not required to be kept separate by the laws of Alabama from demand deposits. All the assets of the bank are held to protect every class of deposits without distinction except deposits of the State or some subdivision thereof, which have been held to be preferred claims.

In answer to question (6) will say that one of the elements of protecting and preserving of assets is to pay the taxes and secured claims which are lien on such assets.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 21, 1932.

Hon. W. C. Batson,
Judge of Probate, Chambers County,
LaFayette, Alabama.

1. Persons duly qualified, who register on the third Monday in October of this year and who pay up all poll taxes due by them may vote at the coming election November 8, 1932.

2. Persons becoming twenty-one years of age after October 1st, 1932, but before the third Monday in October, 1932, and are otherwise qualified, may register when the registration books are opened on the third Monday in October, 1932, and vote at the election to be held on the 8th day of November, 1932. No poll tax is required of such person for the current tax year.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of October 15th to hand. You ask my opinion upon the following:

1st. A person registering when the registration books are opened under the new law, on the third Monday in October, and pays all poll taxes due by him on registering, can he vote in the coming election on November 8th?

2nd. A person becomes of age after October 1st and in time to register when the registration books are opened on the third Monday in October, will he or she, be entitled to vote in the election held November 8th, 1932?

In reply to your first question will say that a person who registers when the registration books are opened, under the new law, on the third Monday in October of this year, and then pays up all poll taxes due by him, he is entitled to vote in the coming election on November 8th.

In reply to your second question will say that a person becoming twenty-one years of age after October 1st, 1932, but becomes twenty-one years of age in time to register when the registration books are opened on the third Monday in October of this year, and does register, is entitled to vote at the election to be held on November the 8th of this year, without the payment of poll tax for the current tax year.

As said in the case of *Shepherd vs. Sartain*, 185 Ala. 454:

“(1) The Constitution (Section 194) levies the poll tax according to age at the time the tax is declared to be due, viz., on the 1st day of October of each year, and the Legislature has no power to change the operation of that provision.

“(2) One who becomes twenty-one years of age before the 1st day of October of any year is subject to the poll tax due on that day.

“One who becomes twenty-one years of age after the 1st day of October of any year is not subject to the poll tax due on that day; his first poll tax being due on the first day of the next October.”

The poll tax year runs from October 1st of one calendar year to September 20th of the succeeding calendar year.

Shepherd vs. Sartain, 185 Ala. 439.

Section 178 of the Constitution of Alabama, reads in part as follows:

"To entitle any person to vote at any election held by the people he shall have resided in the State * * *, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one and for each subsequent year."

At the time the Constitution was adopted, the poll tax due for the year 1901, was the poll tax due October 1st, 1901. Where a poll tax was not due October 1st, none could be due until the next October 1st. The word "year" in Section 178 of the Constitution means poll tax year, and not calendar year.

The opinion to the Judge of Probate of Autauga County of date October 19th, 1929, is hereby modified in accordance with the foregoing.

Yours truly,
THOMAS E. KNIGHT, JR.,

October 25, 1932.

Hon. E. S. Johnson, Clerk,
Circuit Court, Cherokee County,
Centre, Alabama.

Sheriffs are not entitled to pay out of county funds for extraditing felons from other states to this for trial.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 3, 1932 in which you request my opinion as follows:

"Several months ago the Sheriff of Cherokee County, Alabama, after obtaining extradition papers, went to Arkansas after a fugitive, charged with a capital offense, and brought the prisoner back here for trial.

"After his return here the prisoner met with an accident, making him permanently unable to perform manual labor, and because of this and other things, the case against him was not pressed by the State.

"The Sheriff presented his bill to the State for his expenses of the trip, which were refused.

"Is there any way in which the sheriff can be paid legally, by the county, and if so, out of what funds?"

There is no authority of law for the payment of claims of this character out of any fund of the county. I call your attention to Section 3734, Code of Alabama, 1923, which is as follows:

"No fee charged unless expressly authorized.

"The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."

Statutes on fees and costs are penal and must be strictly construed.

42 Ala. 514; 16 Ala. 773.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 25, 1932.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of certain provisions of the Motor Carrier Act of 1931: The Act as a whole confers jurisdiction upon the Alabama Public Service Commission to exercise authority, power and control over motor propelled vehicles not operated on or over rails, used in the business of transportation of passengers or property for hire as a common carrier over the highways of Alabama, and also confers jurisdiction upon the Commission to exercise authority, power and control over any terminal or station facilities for passengers, freight or express transported by such company; the Act authorizes towns or cities to require a license tax of motor transportation companies, but does not authorize such towns or cities to require of such motor transportation companies a license tax for the operation of a terminal or terminal facilities; there is no authority in the Act for requiring a license tax of a terminal even though the terminal is operated by a separate organization; in no event would such town or city be authorized to require more than one license tax and in no event could such town or city require a license tax in excess of the several amounts provided in the Act.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of recent date, in which you inquire about certain provisions of the Alabama Motor Carrier Act, found at page 303 of the General Acts of the Legislature of Alabama of 1931, has been received. Your letter follows:

"Section 59 of an Act approved June 19, 1931, known as the 'Alabama Motor Carrier Act of 1931,' authorizes incorporated cities and towns in this State to collect reasonable privilege licenses or taxes from motor transportation companies doing business in such cities and towns by receiving passengers or freight for transportation for hire into and out of such cities and towns.

"Under Section 1 of the above mentioned Act any corporation, person, partnership or association, or the lessees, trustees or receivers thereof, owning, controlling, operating and/or managing (1) any motor propelled vehicle not operated on or over rails, used in the business of transportation of passengers or property for hire as a common carrier over any highway in this State and (2) any terminal or station facilities for passenger, freight or express transported by such company is classified as a 'motor transportation company.'

"The Commission would appreciate your opinion with respect to the following questions in connection with the above mentioned provision of law:

"1. Where several motor transportation companies conduct their business, by mutual agreement or contract, through a union station, that is, a station provided, maintained and operated jointly by two or more motor transportation companies, is the privilege license or tax above mentioned to be assessed against the union station as a single unit, or is it assessable against each and every motor transportation company which uses such station?

"2. Where a motor transportation company of the type that operates over the highways of the State in the actual transportation of passengers or property transacts its business of receiving and discharging passengers and property in a city or town through a terminal or station maintained by a separate organization and classified under Section 1 of the Act as a 'motor transportation company,' is the privilege license or tax above referred to assessable against both the terminal or station company and each operating company which uses such terminal or station in the transaction of its business therein, or is such license or tax assessable only against the organization separately operating the terminal or station as a motor transportation company?"

Each and every section of the Act in question has been examined.

It will be noted that in the first part of the Act certain authority, power and jurisdiction are conferred upon the Alabama Public Service Commission. This part of the Act provides:

"That in addition to any authority, powers and jurisdiction under the laws of this State now or hereafter conferred upon or exercised by the Alabama Public Service Commission, there is hereby conferred upon said Commission all the authority, power and jurisdiction hereinafter particularly set forth."

Section 1 of the Act defines certain terms used in the Act. In Section 1 "motor transportation" is defined as follows:

"'motor transportation' shall be construed to mean the business of carrying and transporting passengers or property in motor propelled vehicles of any kind whatsoever for hire as common carriers over any public street, alley, road or highway in this State, except transportation solely and wholly within the limits of any municipality and/or within the police jurisdiction thereof; * * *"

In Section 2 the following provision is found:

"Section 2. The Commission is hereby vested with power and authority and it shall be its duty to supervise and regulate every motor transportation company in this State; * * *"

Section 58 of the Act provides:

"Section 58. That all motor transportation companies carrying passengers for hire in this State for the comfort and accommodation of its passengers, must have, when required by the Public Service Commission, at each of the passenger stations along the route usually travelled by or over which such company operates, sufficient sitting or waiting rooms to be determined by the Commission, for passengers waiting for vehicles, having regard to sex and race, which shall be suitably heated in cold weather and supplied with sufficient fresh drinking water when passengers waiting for vehicles are present, and with sufficient and comfortable chairs or seats; and connected therewith a sufficient number of comfortable privies or water closets, to be at all times kept clean; and in a conspicuous place at such station a bulletin board showing the schedule time of the arrival and departure of all passenger buses."

Section 59 of the Act provides:

"Section 59. That any incorporated city or town in this State shall have the right, by proper ordinance, to tax and collect reasonable privilege licenses or taxes from all motor transportation companies as defined by this Act where such motor transportation company does busi-

ness in said town or city by receiving passengers or freight for transportation for hire from said city or town to another point in Alabama or from other points in Alabama to said city or town, provided, however, that said privilege license or tax shall not exceed the sum of Twenty-Five Dollars (\$25.00) in incorporated cities or towns of less than five thousand (5,000) inhabitants and that said privilege license or tax shall not exceed the sum of One Hundred Dollars (\$100.00) in incorporated cities or towns of over five thousand inhabitants and less than twenty-five thousand inhabitants; and that said privilege license or tax shall not exceed the sum of Two Hundred Dollars (\$200.00) in incorporated cities or towns of more than twenty-five thousand and less than one hundred thousand inhabitants; and that said privilege license or tax shall not exceed the sum of Three Hundred (\$300.00) in incorporated cities or towns of over one hundred thousand inhabitants; that the population shall be computed on the Federal Census of 1930 or any subsequent Decennial Federal Census."

It is my judgment that in defining "motor transportation company" at the bottom of page 303 in Section 1 (1 and 2), the Legislature merely intends to confer upon the Alabama Public Service Commission authority, power and jurisdiction over both the terminal and the operation of motor propelled vehicles not operated on or over rails, used in the business of transportation of passengers or property for hire as common carriers over the highways in Alabama. Jurisdiction is conferred on the Public Service Commission to exercise power and control over a terminal or a motor transportation company operating motor propelled vehicles for the transportation of passengers or property for hire as a common carrier. The definition of "motor transportation company" at the bottom of page 303 in Section 1 of the Act is for the purpose of indicating clearly the scope or range of the jurisdiction conferred upon the Commission. The Commission is given jurisdiction over both functions of the transportation business: That of operating a terminal and that of operating motor propelled vehicles as common carriers. If the Legislature had not been explicit and had not mentioned terminals, some doubt would exist as to what jurisdiction, if any, the Commission might exercise over terminals. Moreover, in Section 1 the Legislature seems to recognize that the operation of a terminal is a natural incident to the operation of a transportation company over the highways of the State for hire. It appears that the Legislature, in Section 1, recognizes terminals as one of the functions of the motor transportation business, because in defining "motor transportation company," in Section 1, the Legislature says, in effect, that terminals are included in the term "motor transportation company." The jurisdiction conferred is over both the terminals and the operation of the motor vehicles. So, subheads 1 and 2 at the bottom of page 303, in Section 1 may properly be referred to as the "jurisdiction conferring part" of the Act. It was not the intention of the Legislature, in my judgment, to define "motor transportation company," for purposes of taxation, but merely for the purpose of conferring jurisdiction on the Commission, and in order that the jurisdiction of the Commission might not be a question of doubt or

conjecture. The license tax authorized in Section 59 of the Act is against "motor transportation" as defined in Section 1 of the Act, the said definition being as follows:

"'Motor transportation' shall be construed to mean the business of carrying and transporting passengers or property in motor propelled vehicles of any kind whatsoever for hire as common carriers over any public street, alley, road or highway in this State, except transportation solely and wholly within the limits of any municipality and/or within the police jurisdiction thereof."

The Legislature does not intend to describe the two kinds of businesses for taxation purposes, but describes two kinds of operations over which the Alabama Public Service Commission has and may exercise jurisdiction. Neither does the Legislature, in Section 59, intend to authorize a city or town to impose two different kinds of licenses. In Section 59 the thing which is authorized to be taxed is "motor transportation," as defined in the first part of Section 1 and not motor transportation companies as defined at the bottom of page 303 in Section 1 of the Act. In Section 2 the Commission is vested with power and authority to supervise and regulate every motor transportation company in the State. The Legislature is referring to jurisdiction here and not taxes. In Section 2 the Legislature refers to terminals and the operation of motor propelled vehicles over the highways of the State for hire. In other words, the Legislature has described two functions of the motor transportation business, indicating clearly in the Act that the Public Service Commission is to exercise jurisdiction over both functions of the business. The Legislature also authorizes a city or town to require a license tax of the business, but not each function of the business. The thing taxed is motor transportation. Two functions of motor transportation are the operation of terminals and the operation of motor propelled vehicles for hire over the highways of Alabama. In other words, the tax authorized in Section 59 is against "motor transportation" as defined in the first part of Section 1 of the Act and is not against the two functions of motor transportation defined at the bottom of page 303 in Section 1 of the Act.

In Section 59, where the Legislature authorizes cities and towns to assess a license tax, the Legislature is not referring to terminals at all but refers to:
* * * where such motor transportation company does business in said town or city by receiving passengers or freight for transportation for hire from said city or town to another point in Alabama or from other points in Alabama to said city or town, * * *." The part of Section 59 just closed is referable to the definition of "motor transportation" found in the first part of Section 1 on page 303 of the Act, and is not referable to the definition for "motor transportation company" found in subheads 1 and 2 at the bottom of page 303 in Section 1 of the Act. Among other things, the Act confers jurisdiction and authorizes city and towns to assess a privilege license or tax against motor transportation companies. The jurisdiction con-

ferring part of the Act must not be confused with the taxation part of the Act. Nowhere in Section 59 does the Legislature authorize a town or city to assess a license tax against a motor transportation company for the operation of a terminal. Nothing at all is said in Section 59 about terminals. If the Legislature had intended to authorize cities and towns to tax both functions of the business it could easily have so indicated in Section 59. In this opinion I am not deciding whether the Legislature could or could not authorize cities or towns to assess a license tax against each function of the motor transportation business, but what is decided is that in the Act under discussion the Legislature has not authorized cities or towns to assess a license tax for anything, or against anything, except the operation of a motor transportation company, and the Legislature has recognized that the operation of a terminal is an incident of the operation of a motor transportation company for hire over the highways of the State. Authority for requiring only one license is found in Section 59. The town or city would not be authorized to require a terminal license and a license for the operation of a transportation company for hire.

In Section 58 of the Act the Commission is authorized, in its discretion, to compel transportation companies to maintain terminal facilities. In practically all cases the Commission does require that the transportation companies maintain these terminal facilities. Can it be said that, under these facts, a town or city is authorized to require a terminal license of the transportation company? I think not. Under these facts the transportation company would be vested with absolutely no discretion in the matter. The Legislature is undoubtedly authorized in law to provide that if a person engages in a certain business a town or city may require a license of such person for engaging in that business, but the Legislature is not authorized in law to enact a law which compels a person to engage in a certain business and to require that person to pay a license for engaging in that business. Such was not the intention of the Legislature in enacting the Alabama Motor Carrier Act of 1931. To hold that a city or town could require a terminal license in addition to a license for the operation of a motor transportation company would be tantamount to saying that the Legislature has authority in law to compel a person to engage in a certain business and to compel that person to pay a license to such city or town for engaging in that business.

Of course, in no event is a town or city authorized to require a license in excess of the several amounts mentioned in Section 59.

If several other transportation companies desire to conduct their business, by mutual agreement or contract through a union station or terminal, maintained and operated jointly by two or more transportation companies, only one license could be required by the town or city, viz., a license of each transportation company entering the terminal. There could be no license tax assessed against the terminal as such. I do not mean to say that the Legislature would not be authorized to provide for such a license tax on such a terminal, but I do mean to say that the Legislature has not provided for such a tax in the Motor Carrier Act of 1931.

Where a motor transportation company of the type that operates on the highways of the State in the actual transportation of passengers or property, transacts its business of receiving and discharging passengers or property in the city or town through a terminal or station maintained by a separate organization, such town or city would be without authority, in my judgment, to require a license tax of such separate organization, for operating a terminal, so far as the Motor Carrier Act of 1931 is concerned. The Motor Carrier Act of 1931 does not authorize a town or city to require a license tax of a terminal even in cases where the terminal is operated by a separate organization. The Legislature, of course, could provide such a license tax for such a separate organization, but it has not done so in the 1931 Act. The definition of a motor transportation company at the bottom of page 303 in Section 1 of the Act refers to jurisdiction only and has no reference to taxation matters. It is my judgment that the Act is altogether silent on the question of authorizing towns or cities to require a license tax of any person for the operation of a terminal or terminal facilities. If such authority is to be found it must be found elsewhere than in the Motor Carrier Act of 1931.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 25, 1932.

Hon. Theo Hurt, Clerk,
Circuit Court, Perry County,
Marion, Alabama.

The clerk is not entitled to pay out of the fine and forfeiture fund of the county, for issuing subpoenas for witnesses to appear before the Grand Jury where no bill is found.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 16, 1932 in which you request my opinion as follows:

"Please advise me if I am entitled to compensation for issuing subpoenas for witnesses to appear before the Grand Jury and the Grand Jury finds no bill?"

My answer to your inquiry is in the negative, and is based on the case of Kilgore vs. Swindle, County Treasurer, 119 Ala. 378. In deciding the questions here involved, the Court held:

"Fees due sheriff for serving subpoena on grand jury witness, where no indictment was returned, held not payable from county's fine and forfeiture fund."

It is true in this case the Court was dealing with sheriff's costs for serving witnesses to appear before the Grand Jury, in which cases no bill was found; but this could make no difference, as the rule laid down here will, in truth, apply to clerks' fees for issuing subpoenas for witnesses to appear before the Grand Jury in cases where no bill is found, as well as to sheriffs' fees.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 27, 1932.

Hon. Geo. G. Wallace, Jr.,
Tax Collector, Russell County,
Girard, Alabama.

Under Act, 1931, page 337, no fee provided for Tax Assessor for making escape of delinquent city assessments.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 21, 1932, in which you make the following inquiry:

"The 1931 session of the Legislature of Alabama passed a bill authorizing the Tax Collector to collect and the Tax Assessor to assess city taxes. The Tax Assessor receives a fee for making delinquent State and County assessments. The question is: Should the Tax Assessor receive an additional fee for making the delinquent city assessments?"

I presume you refer to the Act No. 300 approved June 26, 1931, Acts 1931, page 337, providing for the assessment, levy and collection of municipal taxes in cities of not less than 6,500 nor more than 15,000 inhabitants.

I have carefully examined this Act and find no provision for paying the Tax Assessor a fee for making delinquent city tax assessments.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 27, 1932.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
The State Tax Commission,
CAPITOL.

House Bill 72 by Edgar approved October 15, 1932, providing for license tax for wholesalers or distributors of malt beverages commonly known as near beer, requires both State and County license in each County in which such distributor has an established place of business.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Orange Crush Bottling Company of Birmingham, Alabama, is the State distributor for a manufacturer of near beer, and said Company owns various warehouses throughout the State located in other towns from which warehouses it is distributed to the retailers.

"Your opinion is requested as to whether or not the Orange Crush Bottling Company is liable for State and County license, as wholesalers, for each one of its warehouses or for only one State and County license for its main distributing plant located in Birmingham, Alabama.

"Your earliest attention is earnestly requested as the Tax Commission is now enforcing the collection of this license."

In reply I beg to advise that Section 2 of House Bill 72 by Edgar approved October 15, 1932, provides:

"Section 2. Each and every person, firm, corporation, co-partnership, or association, other than a manufacturer for sale engaging in the business of wholesaling, or otherwise selling than at retail to the public, in Alabama, any beverages, liquids, drinks, or refreshments, described in Section 1 of this Act shall, for the privilege of engaging in such business, in addition to any and all other licenses or taxes required to be paid, pay to the Judge of Probate as other license fees are paid, an annual license tax of One Hundred (\$100.00) Dollars."

Section 3 of said Act is as follows:

"Each and every person, firm, co-partnership, corporation, or association, engaged in the business of selling at retail to the public, any cereal beverages, liquids, drinks, or refreshments, described in Section 1

of this Act, shall, for the privilege of engaging in such business, in addition to all other licenses and taxes required by the State pay annually, to the Judge of Probate as other license fees are paid, a license tax of Ten (\$10.00) Dollars."

Section 3½ of said Act is as follows:

"There is also hereby levied for the use of each County in the State fifty per cent of the amount of the State license or privilege tax levied herein for the use of the State."

It will be seen from the above quoted Section that there is a State license of \$100.00 on wholesalers and a County license of 50 per cent of the State license for the use of each County and a State license of \$10.00 for retailers, and a County license of 50 per cent of the State license for each County.

Section 363, Acts 1919, page 282, provides in part as follows:

"And such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, **nor at any other location than that therein specified.**"

Your inquiry therefore is whether a wholesaler, jobber or distributor of the beverages described in said Act is liable for only one State license or whether he is liable for both State and County licenses for every County in which he does business.

It is my opinion that he is liable for both State and County license in every County in which he does business. The general license Act of 1919 above quoted forbids the carrying on of the business at any other place than that for which the license is issued.

Applying the foregoing principle to your particular inquiry I advise that if the Orange Crush Bottling Company has established places of business other than its chief place of business in Birmingham, it is liable for both State and County license in each place where it has an established place of business.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 27, 1932.

Hon. E. L. Hurst,
Judge of Probate, Etowah County,
Gadsden, Alabama.

Under Uniform Veterans Guardianship Act at page 280, of the General Acts of Alabama, 1931, the Probate Judge may rely on the certificate of the director and need not summon a jury, in a case of the appointment of guardians of incompetent veterans and of minor children of disabled or deceased veterans.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of recent date, as follows:

"I am writing you for an opinion on the new Uniform Veterans Guardianship Act. This Act was passed by the last Legislature and is found in the Acts of 1931 on page 280. Under this Act it provides under Section 4, the latter part of said Section, 'In the case of a mental incompetent ward the petition shall show that such ward has been rated incompetent on examination by the Bureau, in accordance with the laws and regulations governing the Bureau.' Under Section 6 of this Act, it provides as follows: 'Where a petition is filed for the appointment of a Guardian of a mental incompetent ward, a certificate of the Director or his representative, setting forth the fact that such person has been rated incompetent by the Bureau on examination, in accordance with the laws and regulations governing such Bureau; and that the appointment of a Guardian is a condition precedent to the payment of any moneys to such person by the Bureau shall be prima facie evidence of the necessity for such appointment.' Section 7, provides as follows: 'Upon the filing of the petition for the appointment of a Guardian under the provisions of this Act the court shall cause such notice to be given as provided by law.' Under Section 21 of this Act, a number of the Sections of the Code of Alabama of 1923 are repealed including Section 8122. Section 8122 of the Code of 1923, provides as follows: 'It shall not be necessary to cite the person for whom the guardian is sought, **no** jury need be summoned and there shall be no pronouncement of insanity in the case, but said person shall at all times have the right to have the appointment revoked and an accounting made to him or her by the guardian, upon producing due proof that he or she has been pronounced cured.' Section 8104 of the Code of 1923 provides as follows: "A guardian for a person alleged to be of unsound mind residing in the county must not be appointed until after an inquisition has been had and taken as hereinafter directed.

"Thus is it necessary under the Acts of 1931, when a petition is filed for the appointment of a Guardian for a person rated incompetent by the Bureau to have a jury and inquisition? Under the new Acts of 1931 there is no provision doing away with the necessity of such a jury. The jury as you know will add considerable expense in each case but as the new Act of 1931 is silent on this question I want your opinion as to whether or not it will be necessary to have a jury and inquisition before one can be appointed as Guardian for a person over 21 years of age, who has been rated incompetent by the Bureau."

I have examined the Uniform Veterans Guardianship Act at page 280 of the General Acts of Alabama of 1931, and I have also examined Sections 8120, 8122, 8123, 8124, 8125, 8126, 8127, 8128, 8129, 8130, 8131, 8133 and 8134 of Article 3 at page 27, Vol. 4 of the Civil Code of Alabama, 1923. Section 8104 at page 23 of Vol. 4 of the Civil Code of Alabama, 1923, has also been examined. The Act of the Legislature of 1927, approved September 6, 1927, found in the General Acts of 1927, has also been considered and examined.

It appears certain that the purpose and intent of the Uniform Veterans Guardianship Act is to provide a law governing the appointment and supervision of guardians of incompetent Veterans and minor children of disabled or deceased Veterans, who are beneficiaries of the Veterans laws enacted by the Congress of the United States. The purpose of the Uniform Veterans Guardianship Act is to place these wards under a system of laws separate and apart from the general laws of this State relating to guardians and wards.

Section 6 of the Uniform Veterans Guardianship Act provides:

"Where a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the director or his representative, setting forth the fact that such person has been rated incompetent by the Bureau on examination, in accordance with the laws and regulations governing such Bureau; and that the appointment of a guardian is a condition precedent to the payment of any moneys due such persons by the Bureau, shall be prima facie evidence for the necessity of such appointment."

Section 7 of the Act 1931, provides:

"Upon the filing of a petition for the appointment of a guardian under the provisions of this Act, the court shall cause such notice to be given as provided by law."

I do not think there is any conflict in these two Sections.

It appears that the last quoted Section refers to Section 8111 at page 25 of Vol. 4 of the Civil Code of Alabama, 1923, and it is my judgment that the notice mentioned in Section 7 is the same notice mentioned in Section 8111.

Section 5 of the Uniform Veterans Guardianship Act of 1931 provides that a certificate of the Director shall be prima facie evidence of the necessity for such appointment. It is my judgment that the certificate in Section 5 is all that is necessary in a case of the appointment of a guardian of an incompetent veteran or of minor children of disabled or deceased veterans. Sections 8104 and 8106 of the Code of 1923 have been considered, and it is my judgment that the intent of the 1931 Act is to eliminate the jury, and to authorize the Probate Judge to rely altogether on the certificate of the Director. My judgment is that upon the production of the certificate mentioned in Section 5 of the 1931 Act, the Probate Judge is authorized, without a jury, and after giving the notice provided in Section 8111 of the Code of 1923, to proceed to appoint a guardian.

The Act of 1931 attempts to repeal Section 8122 of the Code of 1923, which Section provides that no jury need be summoned, but the Act of 1931 does not mention Section 8122 in the title of the Act, and therefore Section 8121 remains the law. But Section 8121 of the Code of 1923 also provides that no jury need be summoned as indicated.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 27, 1932.

Hon. Charles E. Carmichael,
County Solicitor,
Tuscumbia, Alabama.

Carnivals or street fairs operated in connection with County, State or district fairs are not subject to a license.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 21st, 1932, in which you request my opinion as follows:

"Is a Fair Association liable for license under House Bill 349, Goodwyn, (General Acts 1931, p. 288) when the Fair Association charges an admission fee to its grounds upon which is located a Street Fair or carnival with the farm exhibits? The Fair Association is regularly organized County Fair, contributed to by the County Commissioners and the American Legion Fair Association, Inc."

It is my opinion your County Fair Association, which operates what is commonly called a carnival in connection with said County Fair, where such carnival is being operated on the same grounds and in conjunction with such fair, and as a part of same, does not have to pay the license herein designated. The law providing for license for State Fairs and Carnivals is found under Act approved June 6, 1931 (General Acts 1931, p. 288). This Act provides among other things:

"Provided, that the provisions of this section shall not apply to any state fair or carnival operated by or under the auspices of State Fairs, County Fairs or District Fairs."

This section, or paragraph, in my opinion, exempts your Association from the tax here provided.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 31, 1932.

Hon. T. Owen Dosier,
Tax Collector,
Rockford, Coosa County, Alabama.

Tax Collector has no authority to allocate a partial payment of taxes to county and school district purposes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 17, 1932, in which you state:

"Please advise me if there is any objection to the payment by a taxpayer of the County and district school taxes now owing by the taxpayer, the taxpayer not paying the remainder of his County and State taxes until a later date in the year. If this can be done without objection, it is possible that I might secure such payments in some instances at this time, the remainder of the taxes to be paid at a later date. Your very prompt attention will be highly appreciated."

In reply I beg to advise that I know of no specific authority for the Tax Collector accepting payment of the county and district school taxes and paying other taxes at a later date. However, I enclose copy of opinion rendered to Hon. J. W. Hamilton, Tax Collector, Jefferson County, under date of

January 11, 1932, and Hon. Joseph B. Crow, Tax Collector, Mobile County, under date of February 11, 1932, which permits the Tax Collector to accept a partial payment of taxes due provided the lien or rights of the State, counties or school districts, are not in anywise released or affected.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 2, 1932.

Hon. B. M. Miller,
Governor of Alabama,
CAPITOL.

State Textbook Depository should pay to the State commissions calculated on the entire sum on which their percentage was calculated.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 7, 1932, in which you state:

"I am enclosing copy of letter of May 4, 1929, from Loveman, Joseph & Loeb to the State Text Book Purchasing Board. This letter and its acceptance by the State constitutes the contract between the State and Loveman, Joseph & Loeb with reference to handling the textbooks.

"The report of the Examiner of Accounts showed that under this contract Loveman, Joseph & Loeb were due the State \$7,282.22 as of July 1, 1932. Loveman, Joseph & Loeb claim that \$327.44 of this amount was for books sold through the Library Account and that they are not due the commission on these books.

"Will you please investigate this question and advise whether or not the \$327.44 is due the State."

You attach thereto letter from Loveman, Joseph & Loeb under date of October 5th, claiming that the amount of \$327.44 should be deducted from commissions paid to the State because this amount represents sales of books through the library account. You also attach copy of letter of May 4th, 1929, from Loveman, Joseph & Loeb addressed to the State Text Book Purchasing Board, which letter, together with its acceptance, you state constitutes a contract. This letter contains this provision, that this firm, "for the period of six years from July 1st, 1929, or until it ceases to act as such

depository, will pay to such governmental or educational agency as the Governor may designate, a sum equal to one per cent, **calculated on the sum on which our percentage is calculated**, during the first year of said six year period, and a sum equal to two per cent on the sum on which our percentage is calculated, each year for each of the five years thereafter."

I have secured from the Hon. J. H. Hard, Jr., State Comptroller, the report of Hon. E. A. Henry, Assistant Examiner of Accounts, and also letter of Mr. Hard as Chief Examiner of Accounts, under date of September 23, 1932, to Loveman, Joseph & Loeb.

The report of Mr. Henry shows as follows:

Gross sales for year.....\$364,111.10

Two per centum on above due the State as per letter of May 4,
1929\$ 7,282.22

Mr. Hard's letter contains the following paragraphs:

"By referring to the two previous examinations it appears that the amount of \$7,282.22 was arrived at by the same process that was formerly used. The gross sales were determined by checking monthly settlements with the publishers made on an inventory basis. Sales of other than State adopted books were excluded from the compilation. All of these sales were discounted at the rate of 20 per cent off the list which is the basis of the depository's agreement with the publishers on State adopted books. Whatever books may be transferred to the library account have been purchased and settled for on the basis of State adopted books.

"This idea of transfers from the school book account to the library account is an entirely new one. It is apparent that it has not occurred to the Manager of the Depository until sometime within the current year."

It, therefore, appears that the depository was to pay commissions calculated on the sum on which their percentage was calculated. That their percentage was calculated on the gross sale of \$364,111.10. That, therefore, the commission to be paid should be based on the amount on which the depository's commissions were calculated, which is \$364,111.10, making the amount due the State under the commission of 2 per cent, \$7,282.22.

I am, therefore, of the opinion that the claim of Loveman, Joseph & Loeb for \$327.44 should be disallowed. The mere fact that certain State adopted books were transferred to the library account by the depository cannot affect its liability if it receives commissions from the publisher therefor. From the report of the Examiner and Mr. Hard's letter, it appears that commissions

were paid to the depository by the publisher on the full amount of \$364,111.10. It, therefore, follows that the commissions of the State should be based on the same amount.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 2, 1932.

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Gasoline Tax—Distribution of one-cent tax under Act approved July 27, 1931 (Acts, 1931, page 857).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 1, 1932 in which you request my opinion as to when the one-cent gasoline tax levied under an Act approved July 27, 1931 (Acts, 1931, page 857) goes to the counties.

Construing said act in the light of the legislative intent, judicial decisions, and opinions of this office, I am of the opinion that the tax that has accrued prior to October 1, 1932, though not actually collected until after that date, less the cost of collecting, goes into the State Treasury to the credit of the Highway Department for the purposes set forth in said act. I am further of the opinion that the tax accruing on and after October 1, 1932, less the cost of collections, shall be divided equally among the sixty-seven counties of the State in accordance with said act.

Brown, Treas. vs. Gay-Padgett Hdw. Co., 188 Ala. 423;
Winston County vs. Tingle, Tax Col., 196 Ala. 505;
Shelton, Tax Col. vs. Blount County, 202 Ala. 620;
City of New Orleans vs. Davidson, 31 Am. Rep. 228;
In re State Warrants, 6 S. D. 518;
Opinions Attorney General, Book 4, p. 61 (Off. Ed.);
Opinions Attorney General, Book 12, p. 1, (Off. Ed.).

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 2, 1932.

Hon. W. O. Downs, Clerk,
Jefferson Co. Court of Misdemeanors,
Birmingham, Alabama.

1. No costs should be assessed against a defendant where case is nol prossed.

2. Only one seizure fee can be charged in possession of prohibited liquors regardless of the number of defendants who may be charged jointly with the offense.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 19, 1932 in which you request my opinion as follows:

"The question has arisen in this court whether it is proper to charge a defendant in a case of violating the Prohibition Law with the seizure fee where said defendant's case is nol prossed on payment of cost. Also where two or more defendants are arrested charged with possessing the same liquor is it proper to charge the seizure fee in more than one case where more than one is convicted?"

There is no authority of law for charging costs to a defendant whose case is nol prossed. I am enclosing you an opinion of this office written to Hon. Charles W. Sanders, Assistant Solicitor of Jefferson County, May 12, 1931, which further answers your inquiry along this line. Answering your second inquiry, where two or more persons are charged jointly for possessing prohibited liquors, only one seizure fee can be collected as there could be only one seizure. The number charged with being connected with possession of said liquor would make no difference.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 2, 1932.

Mr. G. W. Cook,
County Road Supervisor,
Heflin, Cleburne County, Ala.

A county is not authorized to furnish automobile tags for county commissioners and road supervisor unless such cars are actually owned by the county.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 17th in which you state:

"Would it be legal for the county to furnish the auto tags to the County Commissioners and Road Supervisor for their cars which are used in the performance of their duties. Cleburne County."

In reply I beg to advise that unless the cars are actually owned by the county there is no authority for the county paying the tag license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 2, 1932.

Hon. Claude Hardy,
Judge of Probate of Escambia Co.,
Brewton, Alabama.

1. In counties having 75,000 population or less by the last Federal Census preceding his employment, the clerk of the jury board must be paid for his services rendered under direction of the jury board the sum of \$5.00 per day while actually engaged in the performance of his duties out of the county treasury upon the order of the jury board. Neither the Court of County Commissioners nor the Judge of Probate has any duty to perform with reference to such payment.

2. County Board of Education, upon recommendation of the County Superintendent of Education, shall fix the compensation of enumerators taking any school census and shall order them paid out of the treasury of the county. There is no duty placed upon the Court of County Commissioners to approve the compensation so fixed nor is there any duty

upon the Judge of Probate to issue warrants for such services. The county treasury or depository shall pay such compensation as fixed and ordered by the County Board of Education. There is no duty upon the depository to register such warrants.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of September 1st was duly received. You ask my opinion in regard to the following questions:

1. Have I, as Judge of Probate of Escambia County, authority to issue a county warrant to the Clerk of the Jury Commission under Section 8 of Act No. 47, approved February 20th, 1931?

You ask if the provision for payment of the clerk of the jury board in Section 8 of said Act is in any way controlled by Section 5 of said Section 224 of the Code of Alabama, 1923.

2. Have I, as Judge of Probate of said County, or the depository of said County any right or authority to register an order or warrant issued by the County Board of Education on the County Treasurer of said County pursuant to claims allowed by said Board of Education for the compensation of enumerators taking the school census under Section 122 of the 1927 Alabama School Code?

In reply to question 1, will say that the payment of the Clerk of the Jury Commission is governed entirely by the provisions of said Section 8 of Act No. 47, approved February 20, 1931, and is, in no way, affected by Section 5 of said Act nor by Section 224 of the Code. He is to be paid five dollars per day for services rendered under direction of the Jury Board while actually engaged in performing his duties, out of the county treasury, upon the order of the President of the Jury Board.

Of course, if your county has a depository, he must be paid by the depository upon the order of the President of the Jury Board. Neither the Court of County Commissioners nor the Judge of Probate has any duty or authority with reference to such pay.—Opinion of the Attorney General to Hon. J. F. Smith, Clerk, Circuit Court of Escambia County, September 30, 1932.

In reply to question 2, will say that Section 122 of the Alabama School Code of 1927 makes it mandatory for the County Board of Education to appoint census enumerators upon the recommendation of the County Superintendent of Education and provides that their compensation shall be paid out of the county treasury. This provision takes the whole matter out of the hands of the Court of County Commissioners and the Judge of Probate, thus it is immaterial whether the warrants are registered or not.

County debts are of two categories: (a) those prescribed by statute, therefore involuntary, which constitute a prior claim and (b) those authorized by statute if and when funds become available, therefore voluntary.—Brown, Treas. vs. Gay-Padgett Hdw. Co., 188 Ala. 423, 66 So. 161.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 8, 1932.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Expenses of government.

Opinion by the Attorney General

Dear Sir:

I have your letter of October 21, 1932, in which you state that the Alabama Insane Hospitals have made requisition for warrants due the Hospitals October 1, 1932. You further state that a payment of these monthly appropriations will practically exhaust the funds of the Treasury, in view of the fact that interest on the bonded debt must be paid and the cost of feeding prisoners in county jails and appropriations for other corrective institutions must be met.

You state that the salaries of the executive, judicial and administrative departments of government have not been paid for the month of October.

You inquire whether or not it is your duty to issue warrants against funds now in the Treasury to the insane hospitals to the exclusion of the obligation of the State for the salaries of the executive, judicial and administrative departments.

The power of government of the State of Alabama is by the Constitution divided into three distinct departments, each of which is confined to a separate body of magistracy, those which are legislative to one; those which are executive to another, and those which are judicial to another. These departments created by our Constitution constitute the government of this State without which or either of them there would be no constitutional government.

It is perfectly clear that the revenues of the State must be used to support the above mentioned departments of the government to the exclusion of

any other purpose, so far as it may be necessary that the departments function. The State must exist. The State engages in numerous activities which must be and are administered and controlled by the executive, judicial and legislative branches of government. Without the Legislature the State could not provide for these activities. Without the executive department the mandates of the Legislature could not be executed. Without the judicial, the mandates of the Legislature and executive orders could not be construed, upheld and enforced. Consequently it must be readily observed that the three departments of government carry on activities of the State not strictly classed as legislative, judicial or executive. The Governor of Alabama is the chief executive officer of each board or department of the State government. The Courts of Alabama protect the rights and interests of the various departments of the government and superintend their activities, enforce the collection of the revenue on which to operate, and to protect the rights of every citizen. The executive departments of government are parts of the various boards and commissions and bodies performing functions which even though governmental cannot be strictly defined as an essential of the legislative, judicial or executive branch of government.

These branches of government must be sustained, and out of the revenues of the State of Alabama. It is true that the Legislature has provided or is supposed to have provided revenue with which to run the government of the State of Alabama. At this time the revenue provided to compose the general fund of this State, out of which it is ordinarily supposed, that the expenses of government will be defrayed is inadequate for this purpose, in view of appropriations made by the Legislature which have been met partly from the general fund. Confronted with the inadequacy of the general fund you are in a dilemma as how to continue to defray the necessary and essential expenses of government. Your inquiry is tantamount to the query as to whether or not you may, when the general fund is insufficient, use any part of a special fund or a trust fund that the government may carry on. You will of course glean from what I have said before that I am of the opinion that you must defray the expenses of the essential functions of government. This must be done out of the revenue coming into the Treasury of this State, no matter to what particular activity it may have been dedicated. This is the primary purpose of any revenue.

I am aware of the fact that the Legislature has provided that trust funds may not be used for purposes other than provided in their appropriations. However, by our bill of rights and under our Constitution we have formed the government, which **must** function. I consider the maintenance of essential government higher than an Act of the Legislature, and I do not conceive that the Legislature by any Act intended to suspend government.

However, there is another question presented by your inquiry. That is the question of preference in the support of the Insane Hospitals, corrective institutions, and feeding prisoners in the jails of the State, and places of confinement in the State. In the incarceration of persons in the Insane Hos-

pitals, in jails and penitentiaries and corrective institutions, the State is performing an inherent governmental function of the highest character. That is the exercise of the police power, exercised in the instances mentioned for the purpose of protecting the lives and property rights of the citizens of this State and in the enforcement of the laws of this State. Few of these institutions could be dispensed with, and that they may function in the exercise of the police power, it is necessary that persons be involuntarily incarcerated in them. I cannot conceive that we have a right to confine a person against his will and then abandon him to starve or to suffer from lack of care. We know that people of Alabama in forming this government did not intend that ever should a person confined against his will not be sustained.

However, it may be that some of these institutions including the Insane Hospital have funds on which to run during an emergency. Then so long as there are adequate funds on which these institutions may be maintained and the inmates cared for, in my opinion it is the duty of the administrative officers to run the government. As between the expenses of essential government and the expenses of essential institutions of government, such as heretofore mentioned, the preferment must be determined by the necessity, in line with the thoughts hereinbefore expressed.

Summarizing, I am of the opinion that, you should draw warrants for the payment of the appropriations due the Alabama Insane Hospitals in which persons are involuntarily incarcerated, provided these appropriations are necessary at this time, in view of a lack of other funds in the possession of such institutions. The determination of this necessity is not a question of law when the rule hereinbefore set out is followed but largely one of administration, and I am further of the opinion that the care and maintenance of the inmates of the institutions mentioned at a time when the other government must also function should be confined to actual feeding, housing and clothing of such inmates.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1932.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Mutual Cooperative Associations.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

In reply to your letter of November 1st in which you requested an opinion as to whether or not a corporation organized under Sections 7156-61, Article 21, Code of Alabama, 1923 is subject to the payment of the filing fee and whether or not it is necessary for the Judge of Probate to make a report of such incorporation to you, it is my opinion that such a corporation is not liable for the filing fee nor is it necessary for the Judge of Probate to make a report to you.

Of course this opinion depends upon the facts of each particular case as to whether or not the proposed corporation is organized under the above mentioned sections or under Sections 7127-7155, Article 20, Code of Alabama, 1923. Our opinion, therefore, is based entirely upon the facts assumed in your letter, i.e., that the corporation is bona fide organized under the above mentioned Article 21.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 23, 1932.

Hon. W. K. Martin,
Judge of Probate,
Dothan, Houston County, Alabama.

Under Subsection 3 of Section 9581 of the Civil Code, the Court of County Commissioners is authorized to direct the Probate Judge to re-copy or reprint poll tax records; Commissioners Court has authority to direct the Probate Judge to purchase necessary equipment for such re-printing or recopying; Commissioners Court has authority to pay for such work, equipment, and material required.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of recent date. Your letter follows:

"Houston County Court of County Commissioners passed a resolution directing the Judge of Probate to make up a new card index system of the registered voters of Houston County, which card index system contains the name, age, date of registration and provision for credit of future poll tax payments by the voters who will be due the same. This

system takes the place of a large bound volume or volumes of the data pertaining to the registered voters, but on this bound volume system there is only room for crediting poll tax payments for a period of ten years. Under the new system, individual cards have been made up, and the new system will have provision for credit for thirty or more years, perhaps forty years. This will mean quite a saving to the County in the purchase of bound loose leaf volumes, the old method.

"The question is on compensation to the Judge of Probate for making this new data for the records, and the payment by the County for such equipment. Your opinion is desired on these points."

I beg to refer you to Subsection 3 of Section 9581 of Vol. 4 of the Civil Code of Alabama of 1923. Subsection 3 provides:

"3. To keep all the books, papers, and records belonging to his office with care and security; the papers arranged, filed and labeled, so as to be of easy reference; and the books and records lettered, and kept with general, direct and reverse indexes; but, without the authority of the court of county commissioners, he must not make new indexes."

It is my judgment that the Court of County Commissioners was authorized in law to pass the resolution mentioned in your letter. Under the resolution you are authorized to receive reasonable compensation for the work done. With the approval of the Court of County Commissioners, you are authorized to receive reasonable compensation for the work done in making up the new records. With the approval of the Commissioners Court, you are authorized to purchase the necessary equipment required in recopying or reprinting such poll tax records. There is no doubt that the Commissioners Court has authority to authorize this work and to pay for the same together with the necessary equipment.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 25, 1932.

Hon. Price Williams,
Judge of Probate,
Mobile, Mobile County, Alabama.

Amount of license should be based on the population of the place where the licensee has his established place of business unless the statute provides specifically otherwise.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 10th in which you refer to licenses for lumber yards, coal and coke dealers and doctors, Schedules 117, 38 and 57, Compilation of the Revenue Laws of Alabama, 1929. You inquire relative to these licenses if, where the offices or places of business are located outside the corporate limits of the city, the license should be measured on the population of the place where the office is located or in the city or town where they do business.

Your question is too comprehensive for a conclusive opinion.

However, the general rule is that the license is based on the population of the place where the licensee has his established place of business, and if this place of business is without the corporate limits of the town, and is not one of those licenses such as filling stations where the limit is extended, the license should be paid on the population of the place where the established place of business is located. This is comparatively easy as to lumber yards and coal and coke dealers because presumably the actual sales are made from the place of business. As to doctors the rule is more difficult, but presumably a doctor's place of business is where he maintains his office.

Nothing in this opinion, of course, is to be construed to permit the peddling of coal or lumber or other commodities for which peddling license would be required.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 25, 1932.

Hon. D. R. Boyd, Solicitor,
Inferior Court,
Roanoke, Alabama.

No authority to issue license for sale of cigarettes to rolling stores, the same having no fixed location.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter inquiring if the so-called rolling stores are authorized to take out license for the sale of cigarettes.

In reply I advise that Section 363, Act 1919, page 282, in part provides that:

"Such judge shall issue the license countersigned by him, in the form and on the blank to be furnished to him by the State Auditor, which shall set forth and specify the name of the person, firm or corporation, applying therefor, the business or act which it is proposed to carry on or do thereunder, the **name of the street or location** where it is proposed **to carry on the same**, if such location shall be in a city or town and have a street number, and if not, then the location and amount paid for such license, and the time for which it is issued; and if the license is for a peddler it shall state whether he proposes to travel on foot or on horseback or on wagon or motor vehicle; and such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, nor at **any other location than that therein specified.**"

Under the provisions of this Section, I see no way for license to be issued for sale of cigarettes to rolling stores, they having no fixed place of business, and the license being good only for the location for which issued. If a person took out a license for a rolling store at a certain place whenever the same was moved a new liability would accrue.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 25, 1932.

Hon. B. G. Wilson,
Solicitor, 14th Judicial Circuit,
Jasper, Alabama.

Section 171 of the 1929 Revenue Laws of the State, expressly provides that for doing the work provided by said Section annually, the Court of County Commissioners or Board of Revenue may allow the tax assessor a reasonable compensation.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of October 14th came duly to hand. You ask: "Was the Commissioners' Court justified in allowing the tax assessor a reasonable compensation for making entries annually on the Block and Lot Book under Section 171 of the 1929 Revenue Code of Alabama?"

In reply, will say that clearly it was. Such is the provision in the last sentence of said Section. The statute expressly so provides. After requiring certain entries to be made on the Block and Lot Book, the last sentence of the said Section 171 reads as follows:

"The tax assessor shall annually make the entries thereon, for which he may be allowed a reasonable compensation by the Court of County Commissioners or Board of Revenue."

This Section 171 of the 1929 compilation was Section 46 of the Revenue Act of 1923—Acts 1923, page 178. By Section 67 of the 1919 Act, the same work was required to be done by the assessor annually without pay. This section of the 1919 act was superseded by Section 46 of the 1923 act, which has been the law since its enactment in 1923. What you term the 1929 Revenue Code of Alabama is a mere compilation of the revenue laws of the State. It was never enacted as a Code.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 26, 1932.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Refund of licenses which are collected for special purposes should be paid out of the special funds for which they were collected. Opinion of October 21, 1932, overruled and modified as to the foregoing.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 31, 1932, in which you state:

"Your attention is respectfully directed to an opinion rendered on October 21, 1932, to Page S. Bunker, State Forester, which has refer-

ence to a refund for license erroneously paid, and which was credited to the State Forestry Fund. In this opinion it is stated that the refund of such license money so erroneously paid should be made from the General Fund.

"On account of the phases of our State government by which certain Departments, Bureaus, Commissions and Boards are allowed to enjoy the benefits of certain particular privilege licenses paid in to the State Treasury, the idea occurs that your direction that all refunds of licenses erroneously paid and which have been credited to such Departments, Bureaus, Commissions and Boards should be made from the General Fund will work a hardship on the General Fund which should not be imposed thereon.

"The idea suggests itself that any erroneous payments of license money for the Real Estate Commission, or the Forestry Commission, or the Agricultural Department, or to carry it further the Gasoline and Tobacco Tax, which latter tax is collected especially for the use of the Educational Trust Fund, to be made to be refunded from the General Fund places such other special funds in the attitude of having enjoyed the use of funds to which they were not legally entitled, and, though not legally entitled, a burden is inequitably placed on the General Fund to correct the mistake. Should not refund be had from the fund to which the erroneous collection was credited?"

I have carefully considered the opinion to which you refer. The opinion under date of October 21st held that a refund for license erroneously paid as lumber exporters should be made out of the General Fund and not out of the State Forestry Fund. This opinion was rendered under the particular provisions of the Acts of 1923, creating the Forestry Commission. It was not intended to lay down the proposition that where there is a refund of a tax collected for one of the various special funds that such refund in all cases would come from the General Fund.

In the particular case the tax was collected according to the records for the years 1920 to 1927. Up until the Acts of 1923, the license on exporters of lumber was paid into the General Fund and therefore in my judgment, if there should be a refund of licenses collected prior to the passage of this Act it should be out of the General Fund.

Subsequent to that these taxes were paid into the Special Forestry Fund. Since the passage of this Act the entire amount collected has presumably been paid into the State Forestry Fund. The General Fund has not received any amount therefrom. Therefore the refund provided for by Sections 375 and 376 of the Acts of 1919 should be made from the actual fund to which the tax was paid. The opinion of October 21st is modified and corrected to that extent.

While this matter is one not altogether clear it is inconceivable upon mature consideration to believe that the Legislature intended to create special funds in some cases receiving many hundreds of thousands of dollars and not charge those funds with taxes collected for them when collected in error and refunded.

The opinion of October 21st so far as relates to refund is therefore out.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 26, 1932.

Hon. G. S. Byrne,
Sheriff, Escambia County,
Brewton, Alabama.

1. Section 303, subdivision 5, Code of Alabama, 1923, repeals local law, Local Acts 1907, page 563.

2. Under the law which now applies in your County as provided by Section 303, Code of Alabama, 1923, you do not have to present claims of officers which are against the Fine and Forfeiture Fund of your County to the Commissioners Court for audit and approval.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 9, 1932 in which you request my opinion as follows:

"Please refer to my letter of May 27th and your reply thereto under date of June 11th, 1932. In asking your opinion as to the matters contained in my letter, it seems that I overlooked one point which is material to the settlement of the controversy that has arisen with reference to the status of fine and forfeiture script.

"It is contended by the holders of script or claims against the fine and forfeiture fund that the Local Act of 1907, page 563, has been repealed by Section 303, Subdivision 5, of the Code of 1923. In my former letter to you it appears that I failed to ask your opinion on that point. I therefore ask that you advise me as to the following:

"1. Is the Local Act of 1907, page 563, still in force and effect, or was it repealed by the Code of 1923, Section 303, subdivision 5?

"2. Under Section 303, subdivision 5, of the Code of 1923, is it necessary for claims of officers against the fine and forfeiture fund to be presented to the Court of County Commissioners for audit and approval?"

Answering your communication in which you call my attention to Section 303, Code of Alabama, 1923, and especially to subdivision 5 of said Section which is as follows:

"5. To number and register, in the order in which they are presented, all claims against the fine and forfeiture fund which have been duly authenticated as claims against such fund, and without being audited and allowed by the court of county commissioners, such register showing the number of the claim, the date presented for registration, to whom payable, when it accrued, the character of the claim and the amount thereof; and to pay the registered claims of state witnesses in the order of their registrations, and whenever there is a surplus of such fund, over and above the sum required to pay the registered claims of state witnesses, he must apply such surplus to the payment of the claims of officers of court in the order of their registration. All local laws in conflict herewith are hereby expressly repealed."

It is my opinion that the above Section repeals the local law, (Local Acts 1907, page 563).

It is my opinion as the matter stands now, you do not have to present the claims of officers which are against the Fine and Forfeiture Fund of your County to the Court of County Commissioners for audit and approval.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 26, 1932.

Hon. J. M. Money,
Judge of Probate, Jackson County,
Scottsboro, Alabama.

1. Where land is sold for the payment of taxes upon which there was, at the date of sale, a mortgage duly recorded in the office of the Probate Judge, such mortgagee has a right to redeem such land from such sale at any time within a year from the date of written notice from the purchaser of his purchase of said land at tax sale.

2. A tax deed issued to the purchaser at such tax sale, before the elapse of twelve months after such notice served upon such mortgagee, in no way affects the right of such mortgagee to redeem within the one year period after notice.

3. There is no provision of statute for cancelling the record of a tax deed improperly issued, such a deed is invalid as against one who still has the right to redeem, if such right is exercised in time.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of October 30, 1932, duly received. You make the following statement as facts:

In 1925 a mortgage was given on a piece of land. This mortgage was duly recorded. The mortgage has never been foreclosed. The owner of the land, subject to the mortgage, failed to pay the taxes on said land due October 1st, 1929, and delinquent January 1st, 1930. On June 23rd, 1930, the land was duly and regularly sold for the payment of the taxes thereon, and purchased by one other than the State. The land not being redeemed by anyone in two years from date of sale, a tax deed was executed to the purchaser at the tax sale. The holder of the mortgage, who resides in Dallas County, Alabama, now desires to redeem said land from the tax sale. He has never been notified of the tax sale as provided by Section 3109 of the Code.

You desire to be advised whether or not a certificate of redemption should be issued to the mortgagee on payment of the sum of money required; and, if so, what steps to take to cancel the tax deed on the record.

In reply will say that the tax deed in question was prematurely issued. It can in no way affect the right of the mortgagee to redeem within the time allowed him by law. The purchaser at the tax sale should have ascertained, before applying for a tax deed, whether or not there were any mortgages on said land of record at the date of the sale and should have given such mortgagee notice of such purchase a year before applying for the tax deed. By Section 3109 of the Code, in the last sentence thereof, it is provided:

"If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of said tax sale, the said party shall, in addition to the time herein specified, have the right to redeem said real estate sold, or any portion thereof covered by his mortgage or lien, at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale, served upon such party, and notice served upon either the original mortgagee or lien holder or their transferee of record, or their heirs, personal representatives or assigns, shall be sufficient notice."

In the case of *Osborne v. Waddell*, 176 Ala. 235, it is said:

"For the remedy at law, as provided by Sections 2313 and 2314 of the Code, is not only adequate and complete, but also exclusive."

These sections referred to the Code of Alabama, 1907. Sections 3109 and 3111 of the Code of Alabama, 1923, are the same, in effect, now, as was Sections 2313 and 2314 of the Code of 1907 at the date of said decision. The fact of having issued a tax deed to the purchaser before such notice was given the mortgagee, whose mortgage was duly recorded at the time of such sale, can affect the right of the mortgagee to redeem in no way. There is no need to cancel the tax deed on the record in order that the mortgagee may redeem. There is no provision of law for cancelling such deed on the record, as it is presumed that no deed would be executed under such circumstances.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 28, 1932.

Hon. J. McKee Gould, Surveyor,
Greene and Hale Counties,
Boligee, Alabama.

County Surveyor—Premium of official bond paid by county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 3, 1932 in which you request my opinion as to whether or not the county is authorized to pay the premium on the bond of a county surveyor.

I am of the opinion that your inquiry should be answered in the affirmative. Section 1034(5), Code of Alabama, 1923, provides for the appointment by the Court of County Commissioners of a County Surveyor. Section 1034(7) provides for the making of an official bond. Section 2658 provides for the payment of the premiums of the bonds of county officers by the county.

From the foregoing, I am of the opinion that the County Surveyor is a county officer within the contemplation of Section 2658, *supra*, and that the county is authorized to pay the premium on the bond of said officers.—

Opinion of the Attorney General to the County Surveyor of Greene County under date of February 4, 1930.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 28, 1932.

Hon. E. A. Hammett,
Judge of Probate, Talladega County,
Talladega County.

Where national bank is mere trustee in a mortgage to secure bonds not owning any of the bonds in its own right, the mortgage tax must be collected on the mortgage before filing.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 5, 1932, in which you ask the following question:

"Where a National Bank is trustee in a mortgage to secure bonds, but does not own any of the bonds, would the bank be liable for the mortgage tax?"

Your letter does not convey sufficient information but I judge that the bank is merely the holder of the legal title and not the owner of the bonds. If this be true, it is my opinion that the privilege tax must be collected on such mortgage before filing.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 29, 1932.

Hon. J. R. Gamble,
State Tax Commission,
CAPITOL.

Where automobile finance companies have regular places of business for the sale of their cars, even though such cars are merely repossessed under the powers contained in the mortgages, they are liable for automobile dealers license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter attached to letter of Mr. B. H. Cooper, License Inspector of Birmingham, and also opinion from Messrs. Miller, Graham and Wingo, with reference to the liability of automobile finance companies for automobile dealers license for the sale of cars which they claim are repossessed cars, which they have secured by foreclosing mortgages or retention of title contracts. They claim that this is purely incidental to the money lending business and as they pay money lenders license, they are not liable for the automobile dealers license.

Mr. Cooper's letter makes the following statement:

Certain automobile dealers have vacant lots or buildings in which they display their cars, offering them for sale. These cars have been repossessed by parties who have paid money lenders' license.

If these facts be correct it would seem that regardless of the manner of acquisition of the cars, these parties have a definitely defined place of business for the sale of automobiles. This being true, I do not think the argument that the sale is incidental to the money lending business is sound. Certainly, where the law requires a license for engaging in another line of business, and that business is conducted at a definite place, the mere fact that the property is acquired by virtue of another business would not relieve the party from paying the license required for the second business, which in this case, is the sale of automobiles.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 29, 1932.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

License on peddlers traveling in vehicles.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The second sentence of Schedule 137 of the Revenue Code of Alabama, 1929, reads as follows:

" 'Peddlers of merchandise, other than medicine, fifteen dollars for each County in which they peddle.'"

"Please advise us to what this applies. Whether or not it applies to any peddler who uses a vehicle in peddling."

In reply I call to your attention the paragraph next succeeding the one quoted by you:

"Peddlers, except peddlers of medicine, who are otherwise licensed and except peddlers of tinware, woodenware, stone or clay holloware, tanners who manufacture leather goods, **when traveling in vehicles** shall pay thirty-five dollars for each county in which they peddle."

By the very terms of the Act a different license, to-wit, thirty-five dollars, is charged for peddlers when traveling in vehicles.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 29, 1932.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission,
CAPITOL.

Party not operating car from September 30, 1931, through September 30, 1932, but operating the same on or after October 1, 1932, is immediately liable for license and subject to citation therefor.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your reference of letter from Thos. M. Peters, Jr., License Inspector of Lawrence County with reference to liability for motor vehicle license of persons who have not used or operated their motor vehicles since September 30, 1931, but who propose to use the same after October 1, 1932. You ask if they can be cited for delinquent license prior to November 15th?

In my opinion they can. Such a person will have no legal license tag to operate such motor vehicle and the law provides that it shall be a misdemeanor to operate a motor vehicle on the public highways without a proper license. There is no authority for using from October 1, 1932, to November 15th any license for any preceding year except the year 1931.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 29, 1932.

Hon. Homer F. Mitchell,
Judge of Probate,
Cullman, Alabama.

Building and Loan Associations liable for mortgage and deed tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 27th, in which you make the following inquiries:

"Please advise us if First National Banks are exempt from payment of mortgage privilege tax. Also, advise us if any Home Building and Loan Associations are exempt from the payment of either mortgage tax or deed tax."

In reply to your first inquiry, I beg to enclose copy of opinion rendered to Hon. W. K. Martin, Judge of Probate, Dothan, Alabama, under date of January 13, 1932, which will furnish you with the information needed.

In answer to your second question, I advise that I know of no law

exempting building and loan associations from payment of either the mortgage tax or the deed tax.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 29, 1932.

Hon. G. P. Butler,
Judge of Probate,
Opelika, Alabama.

Contractors liable for license on the amount of acceptance. The fact that he subcontracts all the work does not relieve him from liability.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 9th in which you state a contract has been let in the City of Auburn for the amount of \$60,000.00; that the chief contractor is subcontracting the work and that none of the subcontractors' acceptances exceed the amount of \$5,000.00. You state that the main contractor claims he is not liable for license because he has subcontracted the work and that the subcontractors claim they are not liable because the amount in each case is less than \$5,000.00.

In answer to your question as to liability in these cases, it is my opinion that the chief contractor's claim that he is not subject to license because he has subcontracted the work, is entirely without merit. The license is based on the "gross amount of orders or contracts accepted." He has accepted a contract of some \$60,000.00. It is upon this that the license is laid and his manner of executing the contract has nothing to do with his license liability.

It is therefore my opinion that he is due the license based on the amount of his acceptance. The subcontractors would be due license if the total amount of all contracts accepted throughout the license year, including the present acceptance, exceed \$5,000.00. This is a question of fact for you to determine.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 29, 1932.

Hon. J. H. Hard, Jr.,
State Comptroller,
Montgomery, Alabama.

Tax Collector not entitled to fee of \$0.50 for making levy in cases where delinquent taxpayer pays taxes prior to decree of sale.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 31st requesting me to review opinion rendered to you under date of August 22, 1932, with reference to the fees of Tax Collector in which I stated that the fees were as follows:

For making demand on delinquent taxpayer.....	\$.50
For making levy.....	.50
And for serving notice.....	.25

You call my attention to your particular request to advise what fee should be paid when the delinquent pays the taxes prior to the decree of sale. In this event the fee for making the levy, \$0.50, would not attach and the opinion heretofore rendered is to that extent modified.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 30, 1932.

Hon. W. F. Feagin, Director,
Board of Administration,
CAPITOL.

Convict Department—Use of appropriation for the cost of additions, operation, and maintenance of said Department.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 16, 1932, in which you state the following facts:

The Board of Administration earns and collects money through the operation of the Convict Department.

No appropriation was made by the Legislature to be applied to capital outlay for the Board of Administration for the Convict Department.

On account of the loss of contracts and the probable loss of other contracts whereby convicts in the penitentiary are profitably employed, it is necessary for the proper and economical administration, operation and maintenance of the Convict Department that certain mechanical equipment be installed, to-wit:

1. Knitting machine to produce the underwear and hosiery to be worn by the convicts.
2. Tailoring equipment for the manufacture of discharge suits and other clothing used by convicts.

In order to effect economies and to economically administer, operate and maintain the Convict Department, it is very necessary that the Board of Administration now build and equip for the Convict Department the following:

1. A central warehouse at Kilby Prison to be used for storing purchases made in a wholesale way, and supplying prisons and convict camps as needed.
2. A central laundry at Kilby Prison for the purpose of laundering and keeping clean the clothing of the convicts in the different prisons, including Kilby and those prisons near to it.
3. A tailoring shop at Wetumpka Prison to give employment to the women convicts in making clothing to be worn by the convicts.
4. A knitting mill at Wetumpka Prison for the same purpose.

In view of the above you request my opinion as to whether or not the receipts of the Convict Department appropriated to said Department, and the appropriation made to it by the Legislature can be used in constructing and equipping the buildings and installing the machinery above referred to for the purposes therein set out.

I am of the opinion that your question should be answered in the affirmative subject to the limitations set out below.

Section 21 of Act No. 37, S. B. 82, approved September 7, 1932, provides in part as follows:

"... all appropriations made to any department, institution, bureau, board, commission or other State agency as receive or collect monies available for expenditure by them, are declared to be in addition to such receipts and such appropriations are to be available as and to the extent that such receipts are insufficient to meet the costs of **administration, operation and maintenance** of such departments, institutions, commissions and other agencies."

Section 14 of Act No. 328, S. B. 235, approved November 9, 1932, provides as follows:

"Section 14. Convict Department. (1) For the compensation of the Director of State Board of Administration \$7,500.00 for every year. (2) There is hereby appropriated to the State Board of Administration for the **administration, operation and maintenance**, of the Convict Department, all receipts from its administration and operation of the convicts; and in addition thereto there is hereby appropriated to the said Board of Administration for such purposes such additional sum as shall be needed for the proper **administration, operation and maintenance** of the Convict Department not to exceed the sum of five hundred thousand dollars (\$500,000.00) in any one fiscal year. Such sum appropriated in addition to the said receipts shall be payable out of the General Fund."

I am of the opinion that the words, "administration, operation, and maintenance," are sufficiently broad to include expenditures of the appropriations to the Convict Department for the purposes set out in your inquiries; provided, however, that same are **necessary and essential** to the proper and most economical method of actually feeding, housing and clothing the convicts.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 1, 1932.

Hon. Amzi G. Barber,
Member of Judiciary Committee,
House of Representatives,
Birmingham, Alabama.

Salaries of Circuit Judges may not be reduced during their term of office.

Opinion by the Attorney General.

Dear Sir:

I have your letter of November 21, 1932, in which you state that by legislative authority the salaries of the Circuit Judges of Jefferson County have been supplemented out of County funds. You also state at a special session of the Legislature of 1932 there was an attempt by the Legislature to reduce the salaries of the Circuit Judges of Jefferson County, or that part of their salary which is paid by the County.

You inquire whether or not this effort on the part of the Legislature is effective.

The Supreme Court of the State has repeatedly held that Circuit Judges are State officers. Recently the Supreme Court rendered an **Advisory Opinion** to this effect in replying to an inquiry relative to House Resolution 52.

The Court has also held that the number of the judges of the Circuit Court might be increased by a General Act, basing the decision upon the fact that a Circuit Judge is a State officer.

Section 150 of the Constitution of 1901 provides that the salaries of Circuit Judges may not be diminished or decreased during the time for which they were elected or appointed.

It is true that the Jefferson County Salary Amendment to the Constitution of 1901 provides that the salary of the officers of Jefferson County may be altered from time to time. It will be noted, however, that this amendment expressly mentioned County officers and no reference is made to the salary of State officers.

The question to be decided here is whether or not the people in the ratification of the Jefferson County Salary Amendment intended to remove Jefferson County from the operation of Section 150 of the Constitution.

I am of the opinion that the effect of the Jefferson County Salary Amendment is not to remove Circuit Judges of Jefferson County from the influence of Section 150. This, in view of the fact that the Supreme Court has held that a Circuit Judge is a State officer, and by direct mandate of the Constitution it is provided that Circuit Judges salaries may not be reduced during their official term. Also indicative of the intention of the people not to interfere with Section 150 of the Constitution, is the fact that the Jefferson County Amendment to the Constitution specifically mentions County officers with no reference to State officers.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 1, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

1. Probate Judge is not entitled to pay by the State for issuing certificate of purchase by the State of lands sold for taxes.

2. When mortgagee offers to pay the "ratable part of the taxes" upon the real estate upon which he has a mortgage, as provided by Act No. 578, approved October 1st, 1923, the word taxes includes all costs legally incurred up to date of such offer, which constituted a lien on such real estate.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of September 15th, 1932, was duly received. You ask my opinion:

1st. Is the Probate Judge entitled to a fee of twenty-five cents under the provisions of Section 7285 of the Code of Alabama for making out the certificate of the sale of lands sold for the payment of taxes and bought in by the State?

2nd. In the case where real estate is advertised for taxes, and the mortgagee, as allowed by law, pays the taxes on that part of the real estate that he holds a mortgage on, can the mortgagee be required to pay part of the officer's fees to the date of such payment, or must all officers fees be charged to the part sold for taxes?

In reply to question 1 will say that while it is provided by Section 7285 of the Code:

"Judges of Probate are entitled to the following fees for the following services: Each certificate without seal, \$0.25;"

such provision does not apply in cases where pay for the particular service is otherwise provided for by statute, or is prohibited by statute in the particular case.

By Section 266 of the compilation of Revenue Laws of Alabama (Section 257 of the 1919 Revenue Act) it is provided:

"For the real estate bid off for the State in each case the judge of probate shall make out a certificate of purchase to the State, of like im-

port to the one provided for in the preceding Section, and deliver the same to the Tax Collector who shall on final settlement, deliver all certificates received by him from the Judge of Probate to the State Auditor. * * *

Section 267 of the compilation of Revenue Laws of Alabama (Section 258 of 1919 Revenue Act) provides for the payment by the State of certain costs attending the tax sale of lands bought in by the State and, in the last clause of said Section, provides: "but the State shall pay no other costs attending any tax sale." In said section, pay to the Probate Judge for issuing such certificate is not provided for; but the payment therefor by the State is prohibited by said clause.

The issuing of such certificate by the Probate Judge is a duty imposed upon the Probate Judge without pay.

In reply to question 2 will say that I presume that you have reference to a mortgagee paying the taxes on the real estate covered by his mortgage as provided by Section 1, of Act No. 578, approved October 1st, 1923. This Section of said Act reads as follows:

"Section 1. That any lien holder or mortgagee of real estate included in an assessment with other real estate of the person or corporation to whom the real estate was assessed or subject to the lien of taxes upon other real estate may pay the proportionate or ratable part of taxes upon such real estate purchased by him or subject to his lien or mortgage without paying the entire amount of taxes due by the person to whom such real estate is assessed, if such person to whom such real estate is assessed, or for whose taxes said sold or encumbered property is subject to tax lien, has sufficient other real estate or personal property returned or assessed and subject to levy or sale out of which the remainder of the taxes may be collected by the Tax Collector, provided that the portion of the real estate sought to be redeemed is valued separately in the assessment, if it be less than all the real estate included in the assessment."

In my opinion, when a mortgagee offers to pay the taxes on the real estate covered by his mortgage, as provided by said Act 578, the word "taxes" includes costs up to the date of such offer. Such, in my opinion, was clearly the legislative intent in said section. It was intended that the mortgagee should pay a ratable part of the taxes and costs, which constituted a tax lien on said land.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. H. L. Weathers, Clerk,
Circuit Court, Marshall County,
Guntersville, Alabama.

How costs are collected where defendant is sentenced to serve a term as punishment in the county jail.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 13, 1932, in which you request my opinion as follows:

"In our County Court, in this County, the Probate Judge very often sentences a defendant to the County Jail for the fine and costs, if this is correct, I would like to have your opinion as to how the Clerk and Sheriff are to get their pay in such cases. I refer to misdemeanor cases only.

"I would also like to know if a judge has the authority to remit costs or if he has the authority to not sentence a defendant for costs upon a conviction when the defendant fails to pay or secure the costs."

Answering your first inquiry, I call your attention to Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927 (General Acts 1927, p. 45). This section, as amended, regulates the fine and forfeiture funds of the various counties of the State, and you will note it says among other things: "In any case where the defendant has been convicted, or in which defendants have been convicted, and have been proved insolvent by the return of execution 'no property found.'"

Answering your second inquiry, this office has ruled consistently that the judge trying the case is without power to suspend sentence or grant probation for costs. I am enclosing you an opinion of this office written to Hon. Theo Hurt, Clerk, Circuit Court, Perry County, on June 17, 1932, which will give you the opinion of this office on this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. J. H. Green, Clerk,
Circuit Court, Morgan County,
Decatur, Alabama.

1. License inspectors are not entitled to commissions on fines assessed under Section 21, p. 216, Revenue Laws of Alabama, 1929.

2. When fines are assessed under said Section 21, *supra*, the fine goes to the county where the prosecution originated.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 17, 1932, in which you request my opinion as follows:

"Where a person is arrested by the license inspector, charging the defendant with 'driving a motor vehicle on the highways of Alabama without having an Alabama license tag displayed on same,' is the license inspector entitled to 15 per cent of the fine if a conviction is had and fine paid?

"Should the fine in the case where the defendant is convicted for 'operating a car upon the highways of the State without a tag displayed, be paid to the Fine and Forfeiture of the County, or two-thirds to State and one-third to County, and if divided between State and County, what fund would the County's part go into?"

It is my opinion a license inspector is not entitled to 15 per cent commission on fines imposed under Section 21, p. 216, Revenue Laws of Alabama, 1929, as the prosecution is not for failing to take out a license as provided by Section 324, p. 197, Revenue Laws of Alabama. A prosecution under Section 21, *supra*, is a misdemeanor separate and apart from a prosecution for failing to take out a license to carry on any particular business for which a license is required.

Answering your second inquiry, fines assessed under this provision, that is Section 21, Revenue Laws of Alabama, 1929, is not divided according to the provisions of Section 339 of said Laws, but this fine goes, as fines do in ordinary misdemeanors, to the county where the prosecution originated.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. W. T. Kelley,
Tax Assessor, Walker County,
Jasper, Alabama.

General Act approved July 30, 1931 (General Acts, 1931, page 671) construed.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 17, 1932, in which you request my opinion as follows:

"As Tax Assessor of Walker County, I have complied with Section 46 of the 1923 Acts of Alabama, at page 178, and as Tax Assessor of Alabama, at page 178, and as Tax Assessor of Walker County, I have complied with Section 47 of the Acts of Alabama, at page 178.

"A General Act to amend Section 47 of an Act: 'An act in reference to and to further provide for the general revenue of the State of Alabama,' said Act being found at page 152 of the General Acts of Alabama of 1922. Approved July 30, 1931.

"Does the Act approved July 30, 1931, repeal Section 46 *supra* in toto?

"Does the Act approved July 30, 1931, repeal any portion of Section 46 and if yes, what part does it repeal?

"Is it now necessary to keep a separate book of city property platted from the acreage property?

"Since the passage of the Act of July 30, 1931, how shall the Tax Assessor be paid, and what amount under Section 46 for performing said duties?"

It is my opinion the Act approved July 30, 1931, (General Acts 1931, p. 671) does not in amending Section 47 of an Act approved August 22, 1923 (General Acts 1923, p. 152) repeal Section 46 of said Act, but only combines the two Sections, viz.: 46 and 47 as to the method of payment; that the pay provided for in the amendment, *supra*, is intended for compensation for the work done in compliance with both sections. In other words, the amendment provides pay for performing the services required by both sections. You will note that this amendment reads in part as follows:

"The Court of County Commissioners or court of like jurisdiction shall, for making out the plat book, or renewal thereof, as required by this and preceding Section, pay to the Tax Assessor for the services rendered by him, as follows . . ."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. John B. Weaver,
Judge of Probate,
Double Springs, Alabama.

Fees of Probate Judge in connection with appointing guardian for war veteran is governed by Sec. 7285, Code, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 29, 1932, in which you request my opinion as follows:

"By an Act of the 1931 Legislature approved June 6, 1931, No. 240, found on page 280 of the General Acts of Ala. 1931, you will note that Sec. 8130 of the 1923 Code is repealed. Sec. 8130 provides for a fee of \$5.00 to the Judge of Probate for filing the petition of guardianship for a war veteran, together with costs not to exceed \$2.50. Section 7285 of the 1923 Code enumerates certain fees allowed the Judge of Probate and I will appreciate your opinion as to whether or not I am entitled to the fee and cost in such cases by virtue of Sec. 7285 and if the Act quoted above is in violation of Sections 68 and 281 of the Constitution of Alabama."

I do not think the Act approved July 6, 1931 (General Acts of 1931, page 280) violates either Section 68 or Section 281 of the Constitution of Alabama, 1901. It is my opinion that you are entitled to collect your fee for this service under Section 7285, Code of Alabama, 1923. I call your special attention to the said sub-section which is as follows:

"All other official duties, for the compensation of which no express provision is made by law, such sum as may be allowed by the court of

county commissioners to be paid out of the county treasury, not exceeding per annum, \$400.00."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

It is the legal duty of the State Comptroller to issue warrants for the per diem and expenses of the members, officers, and employees of the two houses of the Legislature, upon presentation to him of certificate signed by the proper officers of the respective houses.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of October 10th to hand. You write as follows:

"In view of the fact that there is no surplus in the State Treasury coming over from the fiscal year ending September 30th, 1932, and the amount in the State Treasury that has been collected from revenues falling due and payable in the fiscal year beginning October 1st, 1932, is entirely inadequate to pay the warrants for the per diem and expenses of the members, officers, and employees of the two houses of the Legislature, and in view of Section 19 of Act No. 37, approved September 27th, 1932, is it my legal duty, as State Comptroller, to issue warrants for the per diem and expenses of the members, officers, and employees of the two houses of the Legislature upon presentation to me of certificate signed by the proper officers of the respective houses?"

In reply will say that, in my opinion, by virtue of Section 4, of Act No. 37, approved September 27th, 1932, and of Sections 1, 2, and 3 of Act No. 63, approved October 7th, 1932, it is your legal duty to issue, "warrants for the per diem and expenses of the members, officers, and employees of the two houses," upon presentation to you, as State Comptroller, "of certificate signed by the proper officers of the respective houses."

In my opinion, if there was any provision of law in any previous act of the Legislature, under the facts now existing, prohibiting the issuance of such warrants, it was repealed by the said Act No. 63. Section 1 of said Act No.

63 appropriates out of any funds in the State Treasury the sum of one hundred and fifty thousand dollars (\$150,000), or so much thereof as may be necessary, to defray the expenses incurred by the present session of the Legislature.

Section 2 of said Act makes it mandatory upon the proper officer for issuing such warrants to issue them upon presentation to him of certificate signed by the proper officers of the respective houses.

Section 3 of said Act No. 63, provides:

"That all laws and parts of laws in conflict with the provisions of this Act be, and the same are hereby repealed."

In my opinion, in contemplation of law, unless the contrary is expressly provided, at the beginning of a fiscal year of the State, the revenue due and collectible during that fiscal year, as well as any surplus left in the Treasury after paying all expenses of the preceding fiscal year, is funds in the Treasury for the purpose of paying the governmental expenses of such fiscal year.

The expenses in question are governmental expenses.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Clay Co., Alabama.

1. Members of the Commissioners Court, Board of Revenue or like governing body of a county, Jury Commissioners and Registrars are required to execute bond under House Bill No. 689, approved November 9, 1932.

2. The Judge of Probate as a member of the Commissioners Court must also execute a bond as such member of the Commissioners Court independent and separate from his bond as Probate Judge of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 21, 1932, in which you request my opinion as follows:

"I write to get your opinion on the Bains bill approved November 9, 1932, relative to bonds for county commissioners, jury commissioners and board of registrars all of whom at present serve without bond.

"1. Are county commissioners whose term expires in January, 1933, required to make bond for the time between the date of approval of said Act, November 9, 1932, until January, 1933, the expiration of their present term?

"2. Are members of the jury commission and board of registrars now in office whose terms expire in two years from now required to make bond?

"3. Under Section 2 of said Act does the judge of probate who has heretofore made bond for \$10,000.00 or more have to make an additional bond? In other words, does the expression 'member of the commissioners court or board of revenue' refer particularly to the members elected or appointed as such and not to the probate judge? Is the judge of probate required to make an extra \$3,000.00 bond as member of the commissioners court, or does his official bond for \$10,000.00 or more cover all his acts? Under the law as heretofore construed the regular bond of a judge of probate is liable for any wrong doing of said judge of probate as member of the commissioners court and it is thought that the judge of probate would not be required to file an additional bond."

The Act you refer to, viz., House Bill No. 689, Bains, approved November 9, 1932, went into effect on its approval. Section 27, of said Act, is as follows:

"Section 27. This Act shall take effect upon its approval by the Governor."

Therefore, it is my opinion that all members of the commissioners courts, boards of revenue, jury commissioners and registrars of voters are required by the provisions of this Act to execute bond and whether they were in office at the time of its approval can make no difference. It is my opinion also that the Judge of Probate, as the principal judge of the commissioners court of any county, is required to execute bond as such separate and apart from his bond as Judge of Probate of his County. I call your attention to Section 6748, Code of Alabama, 1923, which says among other things:

"There is in every county a court of record, styled the court of county commissioners, composed of the judge of probate, as principal judge, and four commissioners."

It is evident from the above that the Judge of Probate is made a member of said court as much so as any other member composing the same, and

Section 2 of the Bains Act, referred to above and here under consideration, provides among other things, as follows:

"That members of the Commissioner's Court, Board of Revenue or like county governing body of each county shall be required to give a bond in the sum of at least \$3,000.00 . . ."

Therefore, in construing Section 6748, *supra*, and Section 2 of said Act, *supra*, in *pari materia*, I am of the opinion that the Judge of Probate as a member of the Commissioners Court, must execute a bond as such under Section 2 of said Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. Knox E. Wooley,
Sheriff, Shelby County,
Columbiana, Alabama.

Commissioners Courts, Boards of Revenue or other like governing bodies of counties are without authority to refuse a claim of a newspaper that has published notice of election under Section 447, Code of Alabama, 1923, if the same has been ordered published by the sheriff, and the price charged comes within the limits of Section 9262, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 10, 1932, in which you request my opinion as follows:

"I desire an opinion from you relative to the law governing the following situation:

"Thirty days prior to the election held on November 8, 1932, I, in accordance with Section 447 of the Code of Alabama gave notice in the Shelby County Democrat of said election. This newspaper after completion of said publication presented a bill to the Board of Revenue of this County for a sum arrived at by counting the words in said notice at one and one-half cents per word for the first publication and one cent a word for each of the three additional publications.

"The Board of Revenue of this County some time back appointed the Chairman of the Board of Revenue and Clerk as a purchasing committee for the Board of Revenue and since this time this committee has required the two newspapers at this place to submit bids upon supplies for the different county officials and award the job to the lowest bidder. I did not submit this publication to the committee but ordered the same done as the law required me to do in the Section above named. The Board of Revenue is now holding this bill for and on account of the fact that the same was not submitted to this committee appointed by said Board.

"I desire to know whether or not this publication is a legal charge against the County of Shelby and whether or not the law of Alabama requires that I submit advertisements and publications required of me as Sheriff, to this Board, who in turn could then submit said job for bids."

It is my opinion that the sheriff is the sole arbiter as to what paper he will publish any notice of an election which is held under Article 8, Section 447, Code of Alabama, 1923.

Sections 447, *supra*, states that the sheriff must give the notice. This makes it imperative on him to do so, and should he fail he would be subject to impeachment for gross neglect of his official duty. It is not the duty of the Commissioners Court or Board of Revenue to make this publication but the duty of the sheriff. See Section 447, *supra*, which is as follows:

"447. Notice by sheriff of election.—The sheriff must give notice at least thirty days before each election, by publication in some newspaper in the county, if any is published therein, and if not, by writings posted at the courthouse door and at three other public places in the county, of the time of holding and the offices to be filled by such election. Such notice shall consist only of the date of the election and the officers to be voted for or subjects to be voted on."

Section 9262 fixes the amount to be paid for such publication, and as long as the sheriff stays within its limits his account must be paid and he does not have to wait for the Commissioners Court, Board of Revenue or other governing body of the county to advertise or otherwise procure bids for such notice.

Of course, it is the duty of the Commissioners Court, Board of Revenue or other governing body of the county to pass on such a claim, and for only one purpose, and that is to see if the charge is reasonable and comes within the law as prescribed by Section 9262, *supra*. If it finds that the claim is regular and the charge made for the same comes within the limits laid down by said section, then they must approve the same. No other reasonable construction can be placed on these two sections when construing them in *pari materia*.

The fact that the Board of Revenue or Court of County Commissioners has appointed or constituted a purchasing agent or agents for the county could make no difference. This agency could not be clothed with authority to go contrary to the plain mandates of the law. However, we wish it understood that we are not saying that the Board of Revenue or Commissioners Court or other governing body of the county has authority under any construction of the law to constitute and clothe with authority such a board or commission for the reason this question cannot from any angle affect the conclusion here reached as the authority for such notice is given by Section 447, supra, and the compensation for the same is fixed by Section 9262, supra.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 5, 1932.

Hon. B. H. Baker,
Clerk, Circuit Court,
Clayton, Barbour Co., Ala.

Solicitor's fee \$30.00 for violating any revenue law of the State not otherwise provided for.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 15, 1932, in which you request my opinion as follows:

"I have a conviction in County Court for the offense of 'driving car with an illegal tag.' Please advise me what the Solicitor's fee is in this case."

I infer from your letter that the party was convicted for operating motor vehicle without a license. You say driving a car with illegal tag, but, as I stated above, I take this to be operating without license. In this event, the Solicitor's fee would be \$30.00 under Section 3738, Code of Alabama, 1923, which is as follows:

"For each conviction of a violation of the revenue law, not otherwise provided for, \$30.00."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 6, 1932.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Officers—Remittances by officers to State Treasury of moneys collected therefor must be made in money.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 28, 1932, in which you state the following facts:

"In a certain county in the State the State owed certain fees to a Circuit Clerk and made payment thereof by issuing Auditor's warrants drawn against the State Treasury, and there were not sufficient funds in the State Treasury to cash said warrants. This was of the previous fiscal year.

"The clerk, having collected subsequently in cases tried in the Circuit Court of said county trial tax, a part of which is due the State, in making his remittance sends warrants which had previously been issued to him as payment on the amount he is due the State. This is for the current year's remittance."

You request my opinion as follows:

"Can the clerk under the law discharge his liability to the State by submitting such warrants in payment of amounts which he is due to the State on account of collections made by him?"

"Has the Treasurer of the State any authority under the law to accept such warrants in payment of the amounts due by the clerk?"

I am of the opinion that both of your inquiries should be answered in the negative. Act No. 491, H. B. 528, approved July 22, 1931 (Acts, 1931, page 604) provides for the collection and remittance of the trial tax money in question.

When the clerk received this money for the State, he was its bailee and was forbidden by law to use the money so collected except as directed by law. Having not done so, he thereby became a debtor to the State. In the absence of authority providing otherwise, payment of a debt must be only in money.

Wadsworth v. State of Alabama, (Ala.) 142 So. 589.

You will see from the above that the remittances can be made in money only and that said warrants, the payment of which is temporarily suspended, are not money. Therefore, the clerk could not discharge his obligation which is due the State in tendering the State warrants and further, the Treasurer could have no authority to accept payment of same for the amount due by the clerk.

Set off or recoupment would not be applicable in a case of this kind, the collections for each fiscal year being separate and distinct units.

Shelton, Tax Collector, v. Blount County, 202 Ala. 620, 81 So. 562.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Under Motor Carrier Act of 1932 it is the duty of the Alabama Public Service Commission to prescribe terms, conditions and provisions of the insurance policies as well as the bonds mentioned in Section 26; neither the Commission nor the probate judge has any authority in fixing the amount of the bonds or insurance policies covering injury to persons.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of November 8th has been received. Your letter follows:

"Section 26 of the Tidwell Motor Carrier Act (H. B. 113), approved by the Governor October 28th, 1932, requires that before a permit shall be issued to any motor carrier subject to the terms of the Act a good and sufficient indemnity bond or insurance policy must be filed and accepted by the Judge of Probate to whom application is made for the permit. It is made the duty of the Commission, by this section, to prescribe in a general order the terms, conditions and provisions of 'such bonds.' A maximum amount of each 'such bond' is definitely provided by the terms of this section, but nothing is said about the minimum amount of such bond.

"We desire to inquire, therefore,—

"First, whether or not it is the duty of the Commission under this Act, or within the Commission's power, to prescribe the terms, conditions and provisions of the **insurance policies** as well as the bonds required to be given by each motor carrier defined by the Act.

"Second, whose duty or responsibility it is, that is the Commission's or the Probate Judge's, to determine the minimum amount of the indemnity bond or liability insurance policy to be accepted in each case.

"Third, whether or not it is within the discretion of the Judge of Probate or of the Commission to accept an indemnity bond or public liability insurance policy issued by any company not qualified under the insurance laws of Alabama.

"Your opinion with reference to these questions will be appreciated."

Section 26 of the Motor Carrier Act of 1932 provides:

"Section 26: No permit shall be issued until there has been filed and accepted by the Judge of Probate to whom application is made, a good and **sufficient indemnity bond or insurance policy** (upon which the premium has been paid in advance for a period of not less than 30 days issued by some **surety or insurance company**, or other insurance carrier duly authorized to transact business as such within this State, for the protection of the public (other than the passengers of, or the shippers of freight by, such carrier) in the collection of damages for which the carrier may be liable by reason of the operation of any motor vehicle subject to the provisions of this Act. **It shall be the duty of the Commission to prescribe by general order the terms, conditions and provisions of such bonds, except, however, the penal sum or maximum amount of each such bond shall be \$5,000.00 for the death of or injury to any one person, and \$10,000.00 for the damage caused by any one accident or occurrence;** and provided further that no permit shall be issued until there has been filed with the Judge of Probate, to whom the application is made, a bond in the penal sum of \$500.00, payable to the State of Alabama, with some surety company qualified to do business in the State as surety thereon, or with personal surety approved by the Judge of Probate, conditioned that applicant shall pay any and all fees, taxes or penalties which may be due under the provisions of this Act, and for the faithful compliance with all lawful decisions, orders, rules, regulations, demands and requirements of the Commission, made, rendered, issued or promulgated under the provisions of this Act. It shall be the duty of the Commission by general order to prescribe the form of such bonds. **No bond or insurance policy** executed in accordance with the requirements of this Act shall be cancelled or otherwise terminated at any time prior to its expiration for any reason until there has been filed with the Commission by the surety a notice to such effect at least 15 days prior to the date of such termination or cancellation. This provision shall be

deemed to be a part of every such undertaking, and no provision thereof, and no agreement between the parties thereto, shall operate to void the same. If any **bond or insurance** policy required to be given by this Section shall become inoperative, the authority under the permit shall cease and be suspended until a bond or insurance policy meeting the requirements of this Section shall become effective and be filed with the Commission." (Underlining ours.)

It is my judgment that it is the **duty** of the Alabama Public Service Commission to prescribe the terms, conditions and provisions of the insurance policies as well as the bonds mentioned in Section 26 of the Act in question. It appears that the words: **Bonds** and **insurance policies** are used synonymously or interchangeably in Section 26. Such, in my judgment, is the meaning of this part of Section 26.

Under this Act, neither the Public Service Commission nor a probate judge has any authority to prescribe the minimum amount of any surety bond or insurance policy required by the Act. The bonds or insurance policies cover liability from one cent up to \$10,000.00.

Among other things, Section 26 provides:

"It shall be the duty of the Commission to prescribe by general order the terms, conditions and provisions of such bonds, except, however, the penal sum or maximum amount of each such bond shall be \$5,000.00 for the death of or injury to any one person, and \$10,000.00 for the damages caused by any one accident or occurrence . . ."

In my judgment, there is no discretion vested in either a probate judge or the Public Service Commission as to the amount of such bonds or insurance policies so far as injury to persons is concerned. The Legislature means to say that the amount of the bond or policy **shall be** in the amount of \$10,000.00, and that such bonds or policies shall provide that not more than \$5,000.00 may be recovered for the death of or injury to any one person, nor more than \$10,000.00 for any one accident or occurrence. In using the words "maximum amount," the Legislature does not mean to say that the Public Service Commission may prescribe a bond or policy for less than \$10,000.00. If the Commission prescribes a bond or policy for \$10,000.00, with provision in such bond or policy that the maximum amount of recovery or liability for damage caused by any one accident or occurrence shall not be in excess of \$10,000.00, and that the maximum liability for the death or injury to any one person shall not exceed \$5,000.00, the Commission will have carried out the intention of the Legislature. It is my judgment that, under the Act, a probate judge has no discretion or authority in the matter of fixing the amount of such bonds or policies.

Under this Act, so far as the \$10,000.00 policy is concerned, neither the Public Service Commission nor the probate judge has any authority to ac-

cept an indemnity bond or public liability insurance policy, unless the company offering such policy or bond has qualified to do business under the laws of the State of Alabama. This opinion has reference to insurance policies and bonds covering injury to persons and not to property.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. E. C. Godfrey,
Sheriff, Sumter County,
Livingston, Alabama.

When confession of judgment is taken in a criminal case in open court, it is the duty of the Judge taking same to pass on the surety.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 24, 1932, in which you ask my opinion as follows:

"Will you please advise me at your earliest convenience who approves the surety for a defendant when he pleads guilty, or is convicted and fined, where a confession of judgment is had. Shall the trial judge or sheriff approve the sureties?"

If the confession is taken in open court, it is the duty of the court to accept the confession and to pass on the surety offered by the defendant.

Brown vs. State, 98 Ala. 83;
Yeldell vs. State, 100 Ala. 26;
Opinions Attorney General, Book 8, p. 22 (Off. Ed.).

I also call your attention to Section 5288, Code of Alabama, 1923, which is as follows:

"5288. Confession of judgment by defendant for fine and costs.—When a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. M. T. Maxwell, Clerk,
Board of Revenue, Tuscaloosa County,
Tuscaloosa, Alabama.

Who are exempt from road duty in Alabama.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 9, 1932, in which you request my opinion as follows:

"We have in Tuscaloosa County quite a number of people employed by the U. S. Government and working under several different departments. Most of these people have their places of business within the corporate limits of Tuscaloosa but live outside of the limits. They are classed as follows:

"Post Office Employees—Mail carriers, post office clerks, janitors, etc.

"Navigation Department—Lock tenders, mechanics, laborers.

"Bureau of Mines and Research Work—This department works at the State University but are paid by the U. S. Government.

"The question is—are employees of the U. S. Government exempt from road tax?"

They are not. See Acts of the Legislature approved July 23, 1931 (General Acts 1931, p. 644) which reads in part as follows:

"... The following persons are exempt from working on the public roads.—All women; all men under twenty-one and over the age of forty-five years; all persons who have lost an arm or leg; all persons who, by nature, accident, disease or the like are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the County Health Officer or County Board of Health, or if there be no such officer or board, then such a certificate from two reputable practicing physicians; all state officers and state employees; all officers and enlisted men in the Alabama National Guard on production of certificates to that effect from his commanding officer or the Adjutant General of Alabama; all officers and employes of hospitals in Alabama; all duly and regularly enrolled students in educational institutions and all teachers thereat who

shall procure a certificate from the officer in charge of such institution to that effect."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. G. C. Brittain, Secretary,
Board of Revenue, Calhoun County,
Anniston, Alabama.

Certain supplies and items for the County Superintendent of Education are payable by the Commissioners Courts or Boards of Revenue of the various counties.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 14, 1932, in which you request my opinion as follows:

"This office has been presented with an invoice covering supplies purchased by Mr. C. J. Allen, County Superintendent of Education. The items on this invoice are as follows:

" '72 Bus Regulations	\$4.50
80 Books Gas & Oil Receipts.....	9.20'

"We desire to pay for these supplies but are not clear as to whether or not this can be legally paid out of the County Funds. Kindly advise your opinion.

"For your information the Bus Regulations listed are posters carrying printed instructions for the bus drivers and school children who ride in the busses and are posted in the school busses belonging to the County Board of Education.

"The gas and oil receipt books listed are forms used by the drivers of the school busses in the purchase of gas and oil and are filed in the office of the County Superintendent.

"Your advising if these supplies can be legally paid out of County Funds upon the order of the Board of Revenue will be appreciated."

It is my opinion the county is authorized to pay for the supplies mentioned above. I call your attention to Section 169 of the School Code of 1927, which is as follows:

"169. Assistants to County Superintendent, Office, Etc.—The County Board of Education may in its discretion provide upon the nomination of the County Superintendent of Education, at least the following assistants; an elementary school supervisor and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of administration and supervision as required of County Superintendents of Education. The County Board of Education may employ additional clerical and professional assistants, including health supervisors, and may reimburse them for all actual traveling expenses necessary in the performance of their official duties. The County Superintendent is hereby required to maintain an office at the County seat. The County Board of Revenue or Court of County Commissioners shall provide the County Superintendent of Education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The County Board of Revenue or Court of County Commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies required by the County Superintendent of Education and his assistants."

Biennial Report of Attorney General, 1928-30, p. 151.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. G. L. Albritton,
Sheriff of Wilcox County,
Camden, Alabama.

Toll bridges—Issuance of free pass to sheriffs

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 16, 1932, relative to whether or not it is legal for you, as Sheriff of Wilcox County, and also your deputies in the discharge of official duties to obtain a free pass over toll bridges.

I am of the opinion that there is no legal objection to obtaining a free pass provided the Alabama Bridge Corporation deems it proper to issue you one. That part of the Act incorporating the Alabama State Bridge Corporation, approved August 31, 1927 (General Acts 1927, page 278) which is pertinent to your inquiry is as follows: "As soon as any of the bridges hereby authorized are put into operation, the corporation shall arrange for their

supervision and collection of tolls for the said bridges which shall be at such rates as the corporation may fix."

Under the above quoted portion of the Act creating the Alabama State Bridge Corporation, said corporation has authority to fix the toll rates. If the said corporation deems it advisable to issue a pass to the sheriff or deputies in discharge of official duties I can see no legal objection to same. This matter, however, is within the discretion of the said corporation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Under the Motor Carrier Act of 1932 a separate permit is required to engage in the contract business and a separate permit to engage in the common carrier business. Under either of these permits the qualified applicant may engage in the business of carrying persons or property, or both, but the permit must so indicate.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of November 9th has been received. Your letter follows:

"In Section 5 of the Tidwell Motor Carrier Act approved October 28th, 1932 (H. B. 113), it is provided that no contract carrier or common carrier shall operate any motor vehicle for hire for the transportation of persons or property upon any public highway in this State without first having obtained a permit therefor from the Judge of Probate of the County in which such carrier resides, etc.

"We would like to have your opinion on the following questions:

"1. Must a separate permit be obtained for each character of operation, that is, contract, carriage and common carriage, in any case where the same person desires to engage in both operations, or may one permit include both?

"2. May one permit be granted for carriers of passengers and property, or must separate permits be obtained for each of such operations?"

Under this Act a qualified person may be given permission to engage in the following characters of business:

1. As a contract carrier of either persons or property, or as a contract carrier of persons and property.
2. As a common carrier of either persons or property, or as a common carrier of persons and property.

It is my judgment that the Act requires a separate permit to engage in the contract business and a separate permit to engage in the common carrier business, as defined in the Act. Under either of these permits the qualified applicant may engage in the business of carrying persons or property, or both, but the permit must so indicate. Such, in my judgment, is the meaning of the Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 7, 1932.

Hon. W. E. Merrell, President,
Board of Revenue, Shelby County,
Columbiana, Alabama.

Commissioners Courts, Boards of Revenue, or like governing body, is without authority to appoint a purchasing agent for the County and require all County officers to submit a list of supplies and stationery required by their offices to said agent, and receive his approval before purchasing same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 14, 1932, in which you state that the Board of Revenue of Shelby County has indicated or appointed a certain individual in said County as purchasing agent for the County. You also state that the Board requires that all supplies for the different offices be submitted to this agent, and that the agent is required to obtain bids for the work before any purchase is made. You state that the heads of the different offices of the County are not permitted to purchase supplies necessary for the carrying on of the business of the offices without first submitting same to the purchasing agent, and that the purchasing agent is empowered by said Board, if they think the supplies are necessary, to purchase same under the conditions and rules laid down by the Board.

You request my opinion:

Can our Board of Revenue through its purchasing agent take over and handle the purchasing of supplies for the various offices of the County in the method and way set out above?

In answering your inquiry it calls for a construction of Section 9604, Code of Alabama, 1923, as amended by an Act approved September 6, 1927 (General Acts 1927, page 693) which Act is as follows:

"That Section 9604 of the Code of Alabama of 1923 be and the same is hereby amended to read as follows: 9604. Stationery of officers paid for by county.—The Judge of Probate, Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or Custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expense for his seal of office, to be paid for by the county."

You will note this Section says among other things, "must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county." It is true the Act says further, "to be paid for by the County on the approval of the Court of County Commissioners, Board of Revenue, or other like governing body." The question naturally arises, does this mean that by such granting of power the Commissioners Court or Board of Revenue may sit in judgment, through itself or other constituted agent, and determine the needs of the various officers named in said Act and say this you can have and this you cannot. This is necessary for your office and this is not. It must be remembered that the people in electing these officers said by their votes that they have confidence in their honesty and integrity, and are willing to entrust their welfare to them, and that they rely upon them for the faithful and honest discharge of the duties of the office to which they have elected them. The Legislature in the passage of the Act, *supra*, concurs in this confidence and says, "must be allowed reasonable expenses, etc." This, in my opinion, can mean but one thing, and that is these officers shall be clothed with the authority to say what their needs are, and contract or purchase such supplies and furnishings as their offices may, in their judgment, need. When such purchases are shown to be necessary and the price paid reasonable, there is nothing left for the Court of County Commissioners, Board of Revenue or other like governing body to do other than audit and allow same. But as stated above the articles to be furnished and contracted for, or purchased must be necessary for the proper discharge of the duties of said office, and the price agreed upon or paid must be reasonable.

I am unable to find any general law conferring upon the Commissioners Courts or Boards of Revenue or like governing body, the authority to take

over the right to buy or purchase the furnishings and supplies for the various officers of a County. The Commissioners Courts, Boards of Revenue or other like governing body of the various counties, are not such Courts as are provided for by the Constitution of the State, but are purely creatures of the statute. Therefore, whatever duties are imposed and powers conferred on said Courts these powers and these duties must be derived from legislative enactment. They have no inherent or constitutional powers.—117 Ala. 203, 23 So. 807; 70 Ala. 145.

Therefore, if the Commissioners Courts or Boards of Revenue or other like governing body have no such power, it naturally follows that they are without power or authority to appoint or constitute an agency and clothe it with such power.

In the furtherance of this investigation, I have examined the Act creating the Board of Revenue of Shelby County which Act became a law without the approval of the Governor by virtue of Section 125 of the Constitution, 1901 (Local Acts 1911, page 154). There is no provision embodied in said Act giving the Board of Revenue of Shelby County such authority, but find that Section 5 of said Act in setting out the jurisdiction and powers of said Court says as follows:

"The board of revenue shall have all jurisdiction and powers which are now, or may hereafter be by law invested in the courts of county commissioners of this State, and the several members thereof shall perform all the duties and services and exercise all the powers, which are, or may be required by law of the several members of courts of county commissioners."

Therefore, I am of the opinion that the Board of Revenue of Shelby County is without power or authority to require the various officers of said County as designated or set out in the Act approved September 6, 1927 (General Acts 1927, page 693 to submit to said purchasing agent all orders for supplies and stationery and receive his approval before purchasing the same. The only authority or power said Board of Revenue has or is authorized to exercise is when the bills are presented to see that the articles purchased are such articles as will be necessary in the performance of their official duties and that the price paid is reasonable. If they find this true, then as stated above they should approve them and pass the same for payment.

Opinions of Attorney General (Off. Ed.) Book 9, page 132.

I am calling your attention to an opinion of this office in the Biennial Report of Attorney General, 1926-28, page 69, which was written to Hon. Oliver Miles, Clerk, Board of Revenue, Columbiana, Alabama, on January 25, 1927, which may be of interest to you.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 8, 1932.

Hon. H. W. Owens,
Judge of Probate, Henry Co.,
Abbeville, Alabama.

Trailers—Section 3 of H. B. 112, Governor's No. 58 applicable to farmers.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of November 9, 1932, in which you request an opinion of this office as to whether or not Section 3 of the above mentioned act is applicable to farmers hauling their farm produce to market.

Section 3 of said act is short, concise, unambiguous and unequivocal and reads as follows: "No person shall operate any trailer on any highway."

The fact that the Legislature did not include farmers in Section 10 of said Act is evidence of their intention to include all those not specifically mentioned by said Section 10.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 8, 1932.

Hon. A. L. Hasty,
Judge of Probate,
Linden, Marengo Co., Ala.

Veterans Act approved July 2, 1931, construed.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your inquiry of recent date relating to the Veterans Exemption Act, approved July 2, 1931, has been received.

In answering your inquiry I shall discuss each and every section of the Act in question and in this way answer a number of similar inquiries.

The Veterans Exemption Act of 1931 is found at pages 397, 398, 399 and 400 of the General Acts of the Legislature of 1931.

Section 1 of the Act provides:

"Section 1. That every bona fide permanent resident elector of the State of Alabama who served as an officer or enlisted man in the United States Army, Navy or Marine Corps during the World War between

April 6, 1917 and November 11, 1918, or in the Spanish-American War between April 21, 1896 and July 4, 1902, or who served as an officer or enlisted man in the Army or Navy of the Southern Confederacy during the Civil War, and who, at the time of his application for license, as hereinafter provided for, shall be physically disabled to the extent of ten per cent or more, shall, upon sufficient identification and upon sufficient proof of such disability and upon sufficient proof of being a permanent resident elector in this State, and upon the production of an honorable discharge from the service of the United States Army, Navy, or Marine Corps during the World War or Spanish-American War within the respective limits of time hereinabove prescribed, or from the service of the Southern Confederacy during the Civil War, be exempt from business or occupational license taxes to the extent, and subject to the conditions hereinafter specified."

This section may be referred to as the qualification section of the Act. In other words, Section 1 contains most of the qualifications the applicant must possess. It is true that other sections of the Act contain further qualifications, but, in the main, the applicant must qualify under Section 1 before he would be entitled to the benefits of the Act. The qualifications mentioned in each section will be discussed. Section 1 provides that the applicant must be a bona fide elector of the State of Alabama; next, the applicant must have served as either an officer or enlisted man in the United States Army, Navy or Marine Corps during the World War, and such service in the World War must have been between the dates April 6, 1917 and November 11, 1918; or, such applicant must have served in the Spanish-American War between the dates April 21, 1896 and July 4, 1902; or, such applicant must have served in the Southern Confederacy during the Civil War. It will be noted that mere service in the Southern Confederacy during the Civil War, without regard to the date of such service, is all that is necessary. At the time of the application, the applicant must be physically disabled to the extent of ten per cent or more, and such applicant must furnish sufficient proof of such physical disability; such applicant must also furnish sufficient proof showing he is a permanent resident elector in this State. Such applicant must also produce an honorable discharge, or satisfactory proof thereof, from the service of the United States Army, Navy or Marine Corps. This proof of honorable discharge is necessary whether the service was rendered in the World War, Southern Confederacy or Spanish-American War. If such applicant bases his claim upon service in the Spanish-American War or the World War, sufficient proof must be made of service within the limits of time mentioned hereinabove. The exemption provided in the Act is an exemption from business or occupational license taxes.

Sections 2, 3, and 4 of the Act provide:

"Section 2. That each such veteran who shall engage in, or carry on, any business or occupation as a means of livelihood through the personal efforts of such person or through the personal efforts of such per-

son and not more than one employee, helper or apprentice, for which business or occupation a license tax is prescribed by the State of Alabama, shall be entitled to a license from the State to so engage in, or carry on, such business or occupation upon payment of the license tax so prescribed, less all, or such portion of, such license tax as shall not exceed twenty-five dollars (\$25.00); provided, however, that no such person shall be entitled to the prescribed deduction or commutation in respect of more than one business or occupation for which a license tax is prescribed by law.

"Section 3. That each such person who shall engage in, or carry on, any business or occupation as a means of livelihood through the personal efforts of such person or through the personal efforts of such person and not more than one employee, helper or apprentice, for which business or occupation a license tax is prescribed by or for any County of Alabama, shall be entitled to a license from such County to so engage in, or carry on, such business or occupation upon payment of the license tax so prescribed, less all, or such portion of, such license tax as shall not exceed twenty-five dollars (\$25.00); provided, however, that no such person shall be entitled to the prescribed deduction or commutation in respect of more than one business or occupation for which a license tax is prescribed by law.

"Section 4. That each such person who shall engage in, or carry on, in his own name, any business or occupation as a means of livelihood through the personal efforts of such person or through the personal efforts of such person and not more than one employee, helper or apprentice, for which business or occupation a license tax is prescribed by any Municipality of Alabama, shall be entitled to a license from such Municipality to so engage in, or carry on, such business or occupation upon payment of the license tax so prescribed, less, all, or such portion of, such license tax as shall not exceed twenty-five dollars (\$25.00); provided, however, that no such person shall be entitled to the prescribed deduction or commutation in respect of more than one business or occupation for which a license tax is prescribed by law."

It will be noted that Section 2 provides an exemption from occupational or license tax prescribed by the State of Alabama, and that Section 33 provides an exemption from payment of occupational or license tax prescribed by Counties, and that Section 4 provides exemption from payment of occupational or license tax prescribed by municipalities. Section 4, of course, refers to any city or town incorporated under the municipal laws of the State of Alabama. In other words, the Act as a whole covers licenses issued by the State, a County and Municipalities.

Before an applicant, who is otherwise qualified, would be entitled to the benefits of the Act, such applicant must show that the business or occupation he expects to engage in is a means of livelihood, and that such business is carried on through his personal efforts, although the Act provides that the veteran may have one employee, helper or apprentice. The business must be

carried on through the personal efforts of the veteran, the business or occupation must be a means of livelihood and the veteran must not have more than one employee, helper or apprentice.

These sections relate in Section 2 to State licenses, in Section 3 to County licenses, Section 4 to Municipal licenses. In each of them it is provided that a qualified veteran engaging in a business or occupation for which a license tax is prescribed by the State of Alabama (Section 2), or for which a license tax is prescribed by or for any County of Alabama (Section 3), or for which a license tax is prescribed by any municipality of Alabama (Section 4), may secure a license to engage in the business with the proviso in each case that the exemption shall not exceed \$25.00, and that the prescribed commutation or deduction should not be in respect of more than one business or occupation for which a license is prescribed by law. The only inquiry is whether the limitation of \$25.00 and the exemption from one business license applies to State, County and Municipal licenses taken together or whether these provisions are applicable and relate to the license prescribed by or for the separate sovereignties.

It would seem that the intention of the Legislature was to exempt a veteran up to \$25.00 for a State license, except he can secure an exemption from only one business license irrespective of the amount of the license required for such business. In other words, if he chooses an exemption of a business requiring a \$5.00 license that is the only exemption he can get from State license.

I am led to believe that the intention of the Legislature was to afford a similar exemption in the matter of County licenses and also in the matter of City licenses. This makes a possible maximum exemption of \$75.00, but the one business rule must be applied in each case. As the State levies both the State and County license in most cases, it would seem that where the veteran selects a certain business to be exempt from State license, he thereby selects the same business for County license for the reason that the levy is made by the State for the County, and the tax is collected at the same time and under the same authority of law. This position is borne out by these facts: There is a separate section applying to State license, a separate section applying to County license, and a separate section applying to Municipal license. In each of them is the language quoted above. It says in substance that where the veteran is carrying on a business for which the State requires a license, he is entitled to certain exemptions. In the following section there is the same provision that where the County requires a license he is entitled to certain exemptions and in Section 4 there is a similar provision that where a Municipality prescribes a license the veteran is entitled to certain exemptions. It is noticeable too that the municipalities levy their own licenses, in some cases on subjects other than that which the State requires a license. This indicates that the sovereignties were considered separately. I am, therefore, of the opinion that a veteran is entitled to an exemption or commutation from one license levied for State purposes, not to exceed in the total \$25.00, but in any case only one State license.

I am likewise of the opinion that a veteran may be exempted from one County license, the total amount not to exceed \$25.00, but in no case can there be an exemption but for one County license.

I am likewise of the opinion that a veteran may secure an exemption or commutation from Municipal license not to exceed \$25.00, but in any case exemption can be had from only one Municipal license.

When I refer to a veteran in the foregoing I mean qualified veteran as heretofore defined in the Act and in the opinion.

"Section 5. Any person who assists or serves such veteran in the conduct, or carrying on, of such veteran's business or occupation shall be deemed an employee, helper or apprentice, whether such assisting person be paid any compensation for his assistance or service or not. The term 'license tax,' as used in this Act, shall be deemed to include any tax prescribed by a license tax schedule, but not to exclude any license tax otherwise prescribed."

Section 5 defines the words, "employee, helper or apprentice." Any person who assists or serves such a veteran in the conduct or carrying on of such business or occupation is a helper, employee or apprentice. Section 5 also defines the term "license tax." This term, license tax, as used in the Act, includes any tax prescribed by a license tax schedule. Section 5 also provides that any license tax otherwise prescribed is also included. In other words, the Act applies to any license tax prescribed by any of the laws of the State of Alabama, or by any county or by any municipality, whether it be mentioned in a license schedule or not.

Section 6 of the Act in question provides:

"Section 6. It shall be the duty of each and every official empowered or charged by law with the duty of issuing licenses in this State to issue a license to every such person as may come within the provisions of this Act, and such license, when issued, shall be marked across the face thereof 'War Veteran's License—Not Transferable.'"

Section 7 of the Act in question provides:

"Section 7. All licenses issued under this Act shall be in the same general form as other licenses and shall expire at the same time as other licenses are fixed by law to expire."

Section 7 provides that all licenses issued under the Act shall be in the same form as other licenses and that such licenses shall expire at the same time other licenses expire. In other words, the Act does not change the form of the license nor the date of the expiration of the license, except that the officer must mark across the face of such license: "War Veteran's License—Not Transferable."

Section 8 of the Act provides:

"Section 8. Proof of disability shall be made by exhibiting a Federal Government rated disability certificate to an extent of ten per cent or more, or an affidavit from an examining physician of the United States Veteran's Bureau showing that the applicant for license is physically disabled to the extent of at least ten per cent, or by the production of a pension certificate issued by the United States Government or by the State of Alabama."

This section provides three ways in which the applicant may show his disability; First, the applicant may show and prove his disability by exhibiting a Federal Government rated disability certificate showing disability of ten per cent or more; next, the veteran may prove his disability by an affidavit from an examining physician of the United States Veteran's Bureau, showing that the applicant is physically disabled to the extent of ten per cent or more; next, the applicant may show his disability by the production of a pension certificate issued by the United States Government or by the State of Alabama, showing the required disability.

Section 9 of the Act provides:

"Section 9. No exemption or commutation herein provided for shall be allowed any corporation, association or partnership, except as to partnerships, the prescribed exemption or commutation shall be allowed a partnership when each partner thereof would be individually entitled to an exemption hereunder: 'provided that an individual entitled to such exemption shall not be denied it by reason of being a member of a partnership in those cases when license is required of the individual members of a partnership and not of the partnership as such.'"

The benefits of the Act do not extend to corporations. No exemption to a corporation may be extended under the Act. The benefits of the Act are extended to a partnership in cases where each partner qualified in all respects under the several provisions of the Act. If a partnership applies for the exemption, the first inquiry would be whether each individual partner qualifies under the Act. If each individual partner qualifies under the Act, then an exemption may be extended to the partnership, but if one of the partners cannot qualify under the provisions of the Act, then the provisions of the Act cannot be extended to the partnership. One of the members cannot qualify under the Act but the other two members do qualify. The exemption must be denied the partnership as such, but this does not prevent the two qualified members from applying individually for the exemption if the partnership is one where licenses are required of the individual members of the partnership and not of the partnership as such. To illustrate, the license on attorneys is on each individual member thereof rather than on the partnership. The members of the firm may secure their individual exemption as this is not strictly speaking a partnership license. Under these circumstances

the license would be issued to the individuals and not to the partnership. However, if the business is a partnership enterprise and the license is issued to the partnership, the exemption given cannot be increased, because both members are veterans. The rule above laid out limiting the amount of the exemption to \$25.00 and to one business applies to any license required of partnerships, to which the benefits of the Act are extended.

Section 10 of the Act in question provides:

"Section 10. Any license issued under the provisions of this Act shall be and/or become null and void and shall afford no protection against a prosecution for doing business without license if the same be fraudulently obtained, or if the business conducted thereunder be not bona fide the business of the veteran licensee, or if the veteran shall at any time conduct his business in such manner as that he would not be entitled to exemption under the terms of this Act."

Section 10 provides that any license under this Act procured by fraud shall be null and void and that the person who so fraudulently procures such license may be prosecuted for doing business without a license. For example, if the business conducted under the license is not bona fide the business of the veteran or if the veteran conducts a business in such a manner as that he would not be entitled to the exemption under the terms of the Act the license immediately becomes null and void and such person would be liable to prosecution under the law for doing business without a license. As a further example: Suppose the person procures a license at a time when the business is a means of livelihood and at a time when he has only one helper, employee or apprentice. Later on, the man inherits \$50,000.00, increases the size of his business and employs three additional helpers. Under this state of facts the license originally issued would immediately become null and void and such a person would immediately be liable for a license under the general laws of the State and without regard to the provisions of the Act.

Section 11 of the Act provides:

"Section 11. No license herein provided for shall be issued in any county other than the county wherein the disabled veteran is a bona fide resident elector; provided, however, that should a disabled veteran holding a veteran's license desire to engage in a business or occupation in a county in this State other than the county in which he has procured such veteran's license, he shall produce the license issued to him in the county of his residence to the Probate Judge of the County where he desires to do business, and such Probate Judge shall countersign the same without charge or fee, and it shall thereafter be as valid as though issued by the Probate Judge of the county of his residence."

Under this section the license must be issued in the county where the applicant is a bona fide resident elector. No license can be issued in any

county other than the county wherein the disabled veteran is a bona fide resident elector. However, if the license is issued in the county where the veteran is a resident elector and the veteran desires to do business under such license in another county, he must present the license issued to him in the county of his residence to the Probate Judge of the county where he desires to do business, and such Probate Judge must countersign the same without charge or fee, and such license thereafter will be as valid as though issued by the Probate Judge of the County of his residence. For example, a veteran is issued a license in Jefferson County, the county where he is a bona fide resident elector. He later desires to move to Choctaw County. He must present his license issued in Jefferson County to the Probate Judge of Choctaw County and the Probate Judge of Choctaw County, must, without fee or charge, countersign the same, thus authorizing the veteran to pursue the same business in Choctaw County without license. This does not mean that the veteran may do business under one license in more than one county. The intention of this section and the Act as a whole is to limit the doing of business to only one county. When the transfer is made the license is dead as to the other county. The veteran may pursue his business in one county only. If he desires to move back to the first county, the exemption may be effected again but in no event would the veteran be entitled to do business in more than one county. The section does not mean that the veteran may transfer his license from one county to another county and to another county and thus be entitled to do business in three counties. The license covers only one county in my judgment. This transfer provision, however, applies to State license, County license and Municipal license. Section 11 provides that the veteran shall produce the license issued to him in the county of his residence (County license, State license or Municipal license) to the Probate Judge of the county where he desires to do business and such Probate Judge shall countersign the same without fee or charge, and that thereafter the license will be as valid as though issued by the Probate Judge of the county of his residence. So, under Section 11, the Probate Judge transfers a Municipal license in the same way he transfers County and State license.

I do not think the Act authorizes the issuance of a license to a veteran in more than one municipality in any one county. There is no provision in this Act for the transfer of a municipal license issued in one county to another municipality in the same county.

Section 12 of the Act in question provides:

"Section 12. Any Probate Judge, City Clerk, or City Comptroller, who wilfully fails or refuses to issue any licenses applied for by a veteran entitled to the benefits of this Act shall be guilty of a misdemeanor and shall be prosecuted as provided by law."

This section provides that the Probate Judge, City Clerk, or City Comptroller, who wilfully fails or refuses to issue such a qualified veteran a license shall be guilty of a misdemeanor and prosecuted as provided by law.

Section 13 of the Act in question provides:

"Section 13. If any section or provision, phrase or sentence of this Act shall be held void or unconstitutional such holding shall not affect or destroy the validity or constitutionality of any other section, provision, phrase or sentence of such Act which is not of itself unconstitutional or void."

This is merely the saving clause of the Act and need not be discussed.

Section 14 of the Act provides:

"Section 14. The Act of the Legislature approved March 9, 1931, entitled 'An Act to exempt Disabled Veterans of the World War and Spanish-American War from the payment of occupational taxes in the State of Alabama and to provide the manner in which such exemption shall be allowed,' together with all other laws or parts of law in conflict with the provisions of this Act, are hereby repealed."

This section repeals the Act approved March 9, 1931, and also repeals all laws or parts of laws in conflict with the Act under consideration.

The Act does not apply to motor vehicles used for private purposes or for hire or public purposes. This kind of license is on the use of the device on the public roads and not on the person operating it. Hence a veteran who is otherwise qualified would not be entitled to any exemption as regards motor vehicles, used either for private purposes or for hire.

Neither does the Act apply to mileage tax collected by the Public Service Commission under the Motor Carrier Act of 1931. This tax is not such an occupational tax as is described in the Veterans Act approved July 2, 1931. The mileage tax is imposed for the purpose of preserving and policing the highways.

The Act does refer to chauffeur's license, although the question of a helper or an apprentice could not be involved in the matter of a chauffeur's license, because of the qualifications required of a chauffeur. In other words, a person who procures a chauffeur's license could not delegate this authority to another. If a person is acting in the capacity of a chauffeur he must procure a chauffeur's license, although he may be helper for some other person who has also procured a chauffeur's license.

The Act does not apply to slot machines, as the license here is clearly on the device and not on the business or occupation.

The Act applies to pool tables. But the credit in no event could exceed \$25.00. Let us suppose a qualified veteran is issued a license, in accordance with the provisions of the Act, to conduct a pool room. The pool table or room is located at Thomaston in Marengo County, Alabama, and the disabled

veteran lives in the southern part of the county and has never moved into the town of Thomaston. The pool room in Thomaston is really conducted by the assistant. The inquiry here would be whether or not the veteran who lives in the southern part of the county is really running the pool room in Thomaston through his personal efforts and as a means of livelihood, and a further inquiry is whether the substitute who conducts the pool room in Thomaston is in truth and in fact such an employee, apprentice or helper as is contemplated in the Act. If the Probate Judge is satisfied that the license was procured by fraud, or that the veteran who lives in the southern part of the county is not conducting the pool room at Thomaston through his personal efforts and as a means of livelihood or that the substitute who conducts the pool room at Thomaston is not in reality a helper, apprentice or employee, then and under these circumstances such veteran would be liable to prosecution for conducting a pool room without a license. This state of facts is covered by Section 10 of the Act in question. Section 10 provides:

"Section 10. Any license issued under the provisions of this Act shall be and/or become null and void and shall afford no protection against a prosecution for doing business without license if the same be fraudulently obtained, or if the business conducted thereunder be not bona fide the business of the veteran licensee, or if the veterans shall at any time conduct his business in such manner as that he would not be entitled to exemption under the terms of this Act."

Of course, the matter presented is one of fact. If the man in the southern part of the county qualified in every respect and actually owns, superintends and supervises the business and conducts the same through his personal efforts and merely employs the man in Thomaston to run the pool room for him as a helper, then under these circumstances the man in the southern part of the county would not be violating the law, but if the man in Thomaston and the man in the southern part of the County have joined to perpetrate a fraud upon the County, the State or the Municipality, then and under these circumstances they would both be liable to prosecution for conducting a pool room without a license.

The Act applies to license for trapping.

Several different licenses are required of persons engaged in the drug business. The veteran would not be entitled to make a deduction from the aggregate of licenses, and would be entitled to only one exemption.

The Act applies to licenses covering the operation of sawmills. Let us suppose that two qualified veterans are partners in the sawmill business. Both partners qualified under the Act and the exemption is extended the partnership as such. The partnership in a case of this kind would stand in lieu of the individual and the partnership would be entitled to only one helper. If the partnership has more than one helper the partnership as such would not be entitled to the exemption. Under these circumstances each partner would not be entitled to a helper.

The Act, in my opinion, does not apply to vending machines. The license on the vending machine is laid on the device rather than the business or occupation of operating it.

All opinions of this office in conflict with the above are hereby overruled and recalled.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. E. W. Patton, Secretary-Treasurer,
Board of Dental Examiners of Alabama,
1807 Comer Building,
Birmingham, Alabama.

Veterans license exemption act of 1931 applies to the \$5.00 license fee mentioned in Section 348 of the Code of Alabama, 1923, but does not apply to the \$2.00 registration fee and the \$20.00 "accompanying application" fee also mentioned in Section 348.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of November 2, 1931, as follows:

"I am advised that World War Veterans, who are drawing disability compensation, are exempt from certain licenses, under a bill passed by the recent sessions of the Legislature.

"I am addressing you with request that you kindly render opinion as to whether said legislation affects the collection of the renewal license of dentists as provided for in Section 348 of the Code of 1923.

"An early reply will be appreciated since the above question has been raised, and so we are waiting your opinion."

You inquire whether the benefits of the World War Veterans Exemption Act of 1931 may be legally extended to the certificate or license fee mentioned in Section 348 at page 585 of the Political Code of Alabama, 1923. The application fee of \$20.00 which must accompany the application mentioned in the first part of Section 348 is not covered by the World War

Veterans License Exemption Act. In other words, the occupational and license taxes mentioned in the Veterans License Exemption Act do not include this fee of \$20.00.

The license fee of \$5.00 mentioned in Section 348 (which license fee you designated a renewal license) is included by the provisions of the Veterans License Exemption Law of 1931. If the Veteran is otherwise qualified, he is entitled to be exempted from the payment of \$5.00 license fee. The Veterans License Exemption Law does not cover such a registration fee (\$2.00) as is described in the last part of Section 348. The Veterans License Exemption Act affects only the \$5.00 fee mentioned in Section 348, and does not effect in any way the \$20.00 fee which must accompany the application nor the \$2.00 registration fee.

Since the \$5.00 fee is less than \$25.00, the entire license or fee may be deducted. The license tax or occupational tax mentioned in the Veterans License Exemption Act does not include such a registration and "Accompanying the application" fees as are described by Section 348.

Yours very truly
THOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Alabama.

In the removal of a prisoner from one jail to another on account of threatened mob violence or insecurity of the jail, the sheriff should obtain an order from the judge under Section 4816, Code of Alabama, 1923. However, in an emergency he might obtain the order later.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 11, 1923 in which you request my opinion as follows:

"When the famous 'Scottsboro negroes' were tried here and convicted, the trial Judge entered on order for them to be transferred to the jail of Etowah County at Gadsden for safe keeping. They were sent to Gadsden, the County paying the expenses and furnishing necessary guards, etc

"Later, the Sheriff at Gadsden removed the negroes to Birmingham and he now submits to the Commissioners Court of this county, a bill for \$50.00 to cover the expenses of removing such prisoners to Birmingham.

"No order by the Judge appears in the court minutes of this county ordering them sent from Gadsden to Birmingham.

"Will you please advise me if this is a legal claim for the county to pay in the absence of such an order.

I think whenever a prisoner is moved from one jail to another on account of danger of mob violence or the insecurity of the jail, etc., there should be an order of the judge as provided by Section 4816, Code of Alabama, 1923, which is as follows:

"4816. Removal of prisoners from one jail to another.—If the jail of any county is destroyed, or becomes insufficient or unsafe, or any epidemic dangerous to life is prevalent in the vicinity, or there be danger of rescue or lawless violence to any prisoner, any circuit judge, or the judge of the county court of the county may, on the application of the sheriff, and proof of the fact, direct the removal of any prisoner or prisoners to the nearest sufficient jail in any other county; and it is the duty of such judge, in such case, to make an endorsement on the order or process of commitment, stating the reason why such removal is ordered, and to date and sign such endorsement."

However, I realize that at times there may arise such an emergency as to require immediate action by the sheriff in order to protect the prisoner, and it would be folly for him to undertake at that time to get such order. I am quite sure in cases of this character, he would not only be justified, but it would be his official duty to act at once, and I doubt not that the judge would give the order later so as to protect the sheriff and allow him pay for such services.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

December 9, 1932.

32-34
Hon. A. F. Harmon, Superintendent,
State Department of Education,
CAPITOL.

Schools—Deed in fee simple to the State essential for approval for state aid for rural school houses.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 23, 1932 in which you state that an application has been made by the Superintendent of Education of Lowndes County for state aid in the erection of a two-teacher school building on a five acre site. You further state that the obstacle in the way of your approval of the said application is the fact that no warranty deed accompanies it, and none is obtainable just now for the reason that the trustee of the land is too ill to transact business.

You request my opinion as to whether or not a bond for title, or other means, is sufficient legal justification for your approval of said application pending execution of a warranty deed.

In answer to your inquiry, I am of the opinion that under Section 381, School Code, 1927, the holder or holders of the fee simple title to the property in question must execute a deed to the State. Further, that the party or parties executing the deed must have a clear and unencumbered title to said property. The question of whether the title be secured by a warranty or a bond for title is a matter of administration, but a deed in fee simple, nevertheless, must be executed to the State in compliance with Section 381.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

December 9, 1932.

Hon. G. P. Butler,
Judge of Probate, Lee County,
Opelika, Alabama.

Under certain circumstances, County Courts of Commissioners or Boards of Revenue may employ an attorney to represent the County in matters vitally affecting the best interests and revenue of the County.

Opinion of Assistant Attorney General Carmicheal.

Dear Sir:

Your letter of August 19th has been received. Your letter is as follows:

"The Court of County Commissioners have requested me to write you for an opinion as to employing counsel to represent the County in certain matters pertaining to the County in fighting local bills introduced in the Legislature which said bills vitally affect the County.

"There is being advertised a bill seeking to take the City of Phenix City from Lee County, together with a few sections of land outside of the city proper, and to rearrange the boundary lines between Lee and Russell counties accordingly. In exchange for Pheonix City the bill proposes to give to Lee County 24 sections of land in another part of the County which said lands are of far less value than that which they seek to take.

"The Court of Commissioners feel that this will seriously cripple Lee County in the revenue obtained from ad valorem taxes and wish to employ counsel to advise them and guide them in the matter.

"The question sought is, can they use the funds of the County to employ such counsel."

The question presented is not easily answered. The authorities of this State and the leading authorities of other states have been investigated, and, there is a sharp conflict in this State and other states.

In my judgement, the only question presented by your inquiry is whether or not a contract of the type mentioned in your letter, between the County and an attorney, falls within the implied powers of the County.

It is well settled that counties can exercise those powers only which are granted in express words or fairly implied to those expressly granted.

Subsection 8 of Section 5498 of the Code of 1923, grants to courts of county commissioners the right to retain or employ attorneys when it is deemed advisable or necessary. This Section when considered in connection with the implied powers of courts of county commissioners, furnishes, in my judgement, authority to your county court of commissioners to employ counsel to represent the county in matters vitally affecting the welfare of the county and affecting the revenue of the county.

I do not, in this opinion, intend to hold that the commissioners may employ an attorney to procure favors from public officials engaged in the discharge of their public duties by personal solicitation or influence as considerations to be addressed to them over and above the merits of the action sought or matters at stake. Such a contract between the County and an attorney as this would, in my judgement, be void as against public policy.

But if there are matters pending in the Legislature that vitally affect your county, its general welfare and its revenue, it is my judgement that the County Commissioners may employ an attorney to come to Montgomery and represent the county, by appearing before the various committees counseling with the members about the merits or demerits of any given matter, and (without becoming a pest or a nuisance or an obstruction to the orderly carrying out of the public business) by using honorable and helpful means and ways, to protect the best interests of your county.

In support of this opinion I beg to refer you to the following authorities: Section 5498, Code of Alabama, 1923; Fitt vs. Commission of City of Birmingham, Southern Reporter, National Rep. System, (Advance Sheets) May 16, 1932, at page 354, together with the authorities cited therein.

Yours truly,
TSOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. R. T. Simpson, Jr.,
Circuit Solicitor,
Florence, Alabama.

County Depositories—Cannot pledge securities in lieu of bond required by Section 317, Code of Alabama, 1923.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 11, 1932 in which you request my opinion as to whether or not a county depository is privileged to deposit with the county approved securities in an amount to be designated by the Court of County Commissioners in lieu of a surety bond as provided by statute.

I am of the opinion that your inquiry should be answered in the negative. Section 317 specifically provides that adequate bond shall be required of county depositories to secure deposits, which shall be in the sum of \$50,000.00 or such other sum as the County Commissioners or Board of Revenue shall fix having due regard to the safety of the county funds.

I know of no authority of law which will allow an acceptance of securities in lieu of said bond. This office has ruled that same cannot be done.—**Biennial Report Attorney General**, 1926-28, page 415.

The opinion of the Attorney General in the Biennial Report of the Attorney General, 1928-1930, at page 986, to which you refer, merely holds that the acceptance of certain securities enumerated in Section 6421, Code of Alabama, 1923, and bonds of the State of Alabama will relieve the officers making the deposits of criminal liability under Section 3973, Code of 1923, but, in my opinion, does not hold that the acceptance of such securities is authorized.—**Opinions Attorney General**, Book 8, page 339, Office Edition.

Yours very truly,
THOMAS, E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. J. M. Mims, Member,
Commissioners Court & Board of Review,
Chilton County,
Thorsby, Alabama.

1. The Tax Assessor in fixing his list of assessments to be passed upon by the Board of Review at its meeting beginning the second Monday in April and ending not later than the first Monday in May, must, from information entered on the tax return list, and from all other information known to him, or which he may procure, proceed to ascertain what, in his judgement, was the fair and reasonable market value of each item of personal property returned by or listed to any taxpayer as of October 1st and so value it. And as to any item of real estate, or improvements thereon, the Tax Assessor must list it of a value as fixed for assessment of the preceding tax assessment year. Such assessment list must be prepared by the Tax Assessor for reviewing, revising, correcting and fixing the assessment values by the Board of Review, at its meeting beginning on the second Monday in April and ending not later than the first Monday in May.

2. At the meeting of the Board of Review beginning on the second Monday in April and ending not later than the first Monday in May, the Board of Review is authorized, and it is its sworn duty, to review, revise, correct and fix the assessment of any person, partnership, corporation or association (except such assessment as may have been approved by the State Tax Commission) as to any or all of the items of his assessment, whether real or personal, in such manner as to secure the assessment of property at sixty per cent of its fair and reasonable market value on October 1st, by raising or lowering the assessment as listed by the Tax Assessor. The duty of so reviewing and revising applies to items of real estate and the improvements thereon as well as to personal property. It is the duty of the Board of Review to make such rules and regulations as will enable it to get the necessary information for so reviewing and revising such list at such meeting.

3. When the Board of Review has discharged its sworn duty of reviewing, revising and fixing the assessment value of the items of real and of personal property at what, in its best judgement, after obtaining all the information possible, under the rules and regulations fixed by it, is sixty per cent of its fair market value and the session has adjourned, to meet again the first Monday in June, and advertisement has been made by the Tax Assessor as provided in Section 56 of said 1923 Revenue Act, and notice has been given the taxpayer where required, the assessments so made by the Board of Review are final, except that any taxpayer, his agent or attorney may file objections, in writing, to any assessed valuation, with the Secretary of the Board of Review, on or before the last Monday in May, as provided in said Section 56, to be heard and passed upon by the Board of Review at its meeting begin-

ning on the first Monday in June. The Board of Review at its meeting beginning on the first Monday in June has no jurisdiction as to any case which has been regularly returned to the Tax Assessor and listed and assessed by the Tax Assessor, as provided by law, and reviewed and fixed by the Board of Review at its meeting beginning on the second Monday in April and notice given the taxpayer when required by statute, except in cases where objections in writing, have been filed by the taxpayer, his agent or attorney. In such cases, if the objections are allowed, the assessment as then fixed becomes final; but if the Board of Review overrules the objections, such taxpayer, his agent or attorney, may appeal such case to the Circuit Court of the County as provided by Section 59 of said 1923 Revenue Act.

The Tax Assessor is the Secretary of the Board of Review.

4. There is no meeting provided for the Board of Review on the first Monday in May. The first Monday in May is the last day the Board may sit in the session beginning the second Monday in April.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of September 17th. You ask my opinion as to whether or not the Board of Review, when it meets on the first Monday in May of any tax assessment year, has the right to reevaluate all property in the County.

In reply will say that the Board of Review is a creature of statute and has only such powers and duties as are given it by statute. So, also, the Tax Assessor has only such powers and duties as are given him by statute.

Such being the case, we find from the statutes that the order and manner of assessment of the property in any County, insofar as affects the answer to your inquiry, is as follows:

1st. The taxpayer makes return of his property, in the County to the Tax Assessor for assessment, as provided by Section 30 of Act No. 172, approved August 22, 1923, (Acts 1923, pages 171 and 172).

In giving such property in for assessment for taxation, the taxpayer must enter, on the list of property returned, his estimated value of each item of personal property listed, for the information of the Tax Assessor and Board of Review in fixing the value of such personal property for assessment.

As to the items of real property, the taxpayer is not required to make any estimate as to value, but the Tax Assessor is required to enter upon the

tax return, in the column provided, the next preceding year's valuation for assessment, and also note on the tax return list whether there has been any physical change, such as improvements, etc., since the preceding year's assessment was made.—Section 35 of said 1923 Revenue Act.

The Board of Review has authority at any time to make such rules and regulations as it may deem necessary to carry out the provisions of the 1923 Revenue Act with reference to its duties.—Section 51 of said Act (Acts 1923, page 180).

The assessed value of any real estate, or improvements thereon, of the year before shall be prima facie the basis of the value of such property for assessment the current tax year and such property shall not be listed by the Tax Assessor for taxation at a less value.—Act No. 172, approved August 22, 1923, Section 36 (Acts 1923, page 174).

Section 38 of said Act No. 172 reads as follows:

"When the assessor shall have completed his work of assessing, valuing and equalizing property, which has been listed for taxation in his county and such valuation shall have been entered on the assessment lists, which shall not be later than the last Monday in March of each year, he shall certify over his signature to the correctness of the returns, showing valuations fixed by him, and he shall at once notify the State Tax Commission by registered mail, that he has completed his assessment, valuation and equalization work and that the tax returns are ready for the review and inspection as provided for in this act. Such lists of property shall be by the assessor delivered to the Board of Review not later than the second Monday in April."

When the foregoing Sections of said Act No. 172 are considered in connection with Section 53 and 54 of said Act, it is clear, in my opinion, that when the Board of Review meets on the second Monday in April of each year to sit from day to day until their duties are completed, which shall not be later than the first Monday in May, it has the authority, and it is its sworn duty, at such session or sitting, to review, revise, correct and fix the assessment values, of both personal and real property, made by the Tax Assessor, by raising or lowering the assessment of any person, partnership, corporation or association (except such assessments as have been approved by the State Tax Commission) as to any or all of the items of his assessment, both real and personal property, in such manner as to secure the assessment of property at sixty per cent of its fair and reasonable market value.

The majority of a quorum of the Board of Review shall govern in fixing the value for assessment of all property before them for determination.—Last sentence of Section 54 of 1923 Revenue Act.

The Tax Assessor, when he has completed the assessment as provided by law for him to make it, notifies each member of the Board of Review,

and such Board is then required to meet on the second Monday in April and sit from day to day until the duty of reviewing, revising, correcting and fixing the assessment values, made by the Tax Assessor, is completed, by raising or lowering such value as to all items of assessment, whether personal or real, in such manner as to secure the assessment of property at sixty per cent of its fair and reasonable market value.—Revenue Act 1923, Section 54.

When the Board of Review has fixed the value of each piece of property at what, in its honest judgement, from all the facts known to it or made known to it, is sixty per cent of what the market value of such property was on October the first of the tax assessment year, and adjourns, for such session or sitting, and the tax collector has given notice of any raises in value from that of the preceding year, if any, the values so fixed by the Board of Review are final, except that, after advertisement by the Tax Assessor, as provided by Section 56 of said 1923 Revenue Law (Acts 1923, page 181), and on or before the last Monday in May, a taxpayer, who is not satisfied with the valuations of his property as fixed by the Board of Review, and on file in the office of the Tax Assessor, may file his objections, in writing, to such assessed valuations, with the Secretary of the Board of Review, (which Secretary is the Tax Assessor) in the manner prescribed by said Section 56, to be heard and passed upon at the meeting of the Board of Review at its session beginning on the first Monday in June to consider such protests as may have been filed on or before the last Monday in May.—Said Act, Section 57.

If no protest against an assessment as fixed by the Board of Review at its meeting beginning on the second Monday in April and ending on or before the first Monday in May is filed by the taxpayer on or before the last Monday in May, then such assessment becomes final, so far as the Board of Review or Tax Assessor is concerned. The Board of Review is without jurisdiction to further interfere with such an assessment, and what it attempts to do with such an assessment on or after the first Monday in June which its duty was to review and revise at its meeting beginning on the second Monday in April and, as to which, no protest has been filed, is void.

Where protest has been filed by a taxpayer, his agent or attorney, in the manner provided, if at the hearing of such protest at the meeting of the Board of Review beginning on the first Monday in June, the objections are overruled, such taxpayer, his agent or attorney, may take an appeal from the action of the Board of Review, in overruling his objection to such valuation, to the Circuit Court.

The foregoing opinion deals with the duty and authority of the Tax Assessor and the Board of Review as to the assessment of property, both real and personal, regularly returned by the taxpayer to the Tax Assessor for assessment. It does not undertake to go into the duty of each with reference to escapes or to the assessment of property to owner unknown, or

to the duties and authority of the State Tax Commission with reference to **ad valorem tax** assessments.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Filing fees—American Legion Posts.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 22, 1932 in which you request my opinion as to whether or not an American Legion Post in Alabama should pay a filing fee provided by Section 6975, Code of Alabama, 1923.

I am of the opinion that your inquiry should be answered in the negative if said post was incorporated under Article 23 of Chapter 274 (Sections 7167-92) Code of Alabama, 1923, which provides for the incorporation of certain associations among which are patriotic societies.

If the corporation is incorporated under Article 23, Chapter 274, *supra*, and not Article 1 of Chapter 274 (Sections 6964-80) Code of Alabama, the filing fee provided for in Section 6975 is not applicable.

Opinions Attorney General, 1920-22, pages 417, 430;

Opinions Attorney General, Book 10, page 223, (Off. Ed.).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. W. B. Harrison, Secretary,
Board of Commissioners of the State Bar,
First National Bank Building,
Birmingham, Alabama.

Circuit solicitor who does not engage in the private practice of law, would not be required to pay a license. However, if he does engage in the private practice, he would be subject to said license the same as other attorneys. Deputy solicitor is not exempt.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 8, 1932, in which you request my opinion as follows:

"The question has been raised by some of the circuit solicitors and deputy solicitors as to whether or not they are subject to the payment of the ten dollar annual license required by statute of all lawyers engaged in the practice. I have expressed the view that circuit solicitors are constitutional officers and that no license can be enacted of them as a condition precedent to the discharge of their official duties. This is not true of deputy solicitors or county solicitors for they are not constitutional officers, as I see it. Furthermore, if any solicitor, deputy, county or circuit, practices law outside of his official work, he would be due the license.

"So far as I can see a solicitor who engages in the private practice of law is no more exempt from the payment of the license exacted of lawyers, than a solicitor who is engaged in some line of business selling gas, oil, cigarettes, etc., for which a special license is required.

"Acts, 1931, page 606 defines the practice of law, and at page 287 prohibit the recognition in court of an attorney who has not paid the license (Sec. 11), and the same page (Sec. 21) makes it a misdemeanor for one to practice as an attorney who has not paid the license.

"To clarify the matter and in order that no solicitor may be done an injustice, I would appreciate an opinion from your office as to whether or not circuit, county, or deputy solicitors who engage in the private practice of law are due to pay the annual license which is exacted of all lawyers."

A circuit solicitor who does not practice law and who devotes all his time to his official duties, would not be required to procure the license, which you refer to above, but if he should engage in the private practice of law, whether such practice were extensive or not, he would be subject to pay

a license. See Section 11 and Section 21 of an Act approved June 6, 1931 (General Acts 1931, p. 254).

What I have said relative to circuit solicitors would apply to deputy solicitors.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. J. H. Hard, Jr.,
State Comptroller.
CAPITOL.

Statutes—Construction of Act No. 37, S. B. 87, approved November 27, 1932, and Act No. 328, S. B. 235, approved November 9, 1932.

Opinion by the Attorney General.

Dear Sir:

I have your letter of December 1, 1932 in which you state that an estimate of the revenues of the current fiscal year indicates a deficit in the General Fund of \$1,111,246.32. You state, further, that it is, therefore, necessary to prorate this sum against the departments, boards, commissions and agencies that are subject to the provisions of Section 19 of Act No. 37, S. B. 87, approved September 27, 1932, known as the "Budget and Financial Control Act."

Construing the Budget and Financial Control Act, supra, in connection with Act No. 328, S. B. 35, approved November 9, 1932, known as the "General Appropriations Bill", you request my opinion as follows.

1. Is a statutory salary subject to proration?
2. Are the appropriations to the departments that have been made an appropriation for only statutory salaries subject to proration?
3. Where a lump sum is made to a department which includes in part statutory salaries, is this lump sum appropriation subject to proration in whole or in part?
- 4. Is the Governor's Contingent Fund subject to proration?
5. Is the Governor's Interest Contingent Fund subject to proration?

6. Is the Governor's Emergency Fund subject to proration?

7. Does the exception in Section 19 of the Budget and Financial Control Act, *supra*, excepting per capita appropriations to Eleemosynary and Correctional Institutions include (a) the Convict Department, and (b) the State Training School for Girls at Birmingham?

Section 19 of the Budget and Financial Control Act, *supra*, provides as follows:

Section 19—APPROPRIATIONS: The appropriations made shall not be available for expenditure until allotted as provided for in Section 20, except as may be otherwise provided in this Act. All appropriations now or hereafter made **except per capita appropriations now in force or hereafter made to Eleemosynary and Correctional Institutions and the Alabama School for Deaf and Blind at Taliadega, Alabama**, which appropriations shall remain in full force and effect and payable and disbursed as now provided by law are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named only in the event that the estimated budget resources during each fiscal year of the quadrennium for which such appropriations are made, are sufficient to pay all the appropriations in full; the Governor shall restrict allotments to prevent an overdraft or deficit in any fiscal year for which appropriations are made by prorating without discrimination **against any department, institution, commission or other State agency**, the available revenues among the various **departments, institutions, bureaus, boards, commissions and other State agencies**. In other words, the said appropriations shall be payable in such proportion as the total revenues estimated by the Governor as available in each of said fiscal years. The purpose of this provision is to insure that there shall be no overdraft or deficit in the several funds of the State at the end of a fiscal year, and the Governor is directed and required to so administer this Act as to prevent any such overdrafts or deficits. (*Italics supplied*).

I am of the opinion that your first inquiry should be answered in the negative. Section 19, *supra*, provides for the proration of appropriations to the various departments, institutions, bureaus, boards, commissions and other State agencies. An appropriation for a statutory salary is not in my opinion, an appropriation to a department, institution, bureau, board, commission or other State agency within the meaning of Section 19, *supra*. Other State agencies, as used in said section, refers to other agencies of like nature to departments, institutions, bureaus, boards, and commissions. It is, therefore, my opinion that a statutory office is not a State agency within the contemplation of this section

I am of the opinion that your second inquiry should be answered in the negative. Although in the appropriation bill the appropriations for statutory salaries are set out according to the various departments, yet the appropria-

tions are for the salaries of statutory officers in certain departments and not appropriations to said departments.

In answer to your third inquiry, I am of the opinion that only so much of such appropriation as is not necessary for statutory salaries is subject to proration. Although there may be a lump sum appropriation made to a department which is to include statutory salaries for that department, yet so much of the appropriation as is necessary for the statutory salaries is an appropriation for those statutory salaries and is not subject to proration. However, the difference between the total appropriation and the amount necessary for statutory salaries would be subject to proration, said difference being strictly an appropriation to a department.

I am of the opinion that your fourth, fifth and sixth inquiries should be answered in the negative. The Governor's Contingent Fund, the Governor's Interest Contingent Fund, and the Governor's Emergency Fund are not, in my opinion, appropriations to departments, institutions, bureaus, boards, commissions or other State agencies within the meaning of Section 19 of the Budget and Financial Control Act, *supra*.

In answer to your seventh inquiry, I am of the opinion that the appropriations to both the Convict Department and the State Training School for Girls are subject to proration. The exception contained in Section 19 of the Budget and Financial Control Act, *supra*, excepts the **per capita appropriations** now in force or hereafter made to Eleemosynary and Correctional Institutions and the Alabama School for Deaf and Blind at Talladega. These appropriations are lump sum appropriations. Not being **per capita appropriations**, they do not come within the exception.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 9, 1932.

Hon. C. J. Allen,
County Superintendent of Education,
Anniston, Calhoun County, Alabama.

Officers—County Superintendent of Education vacates office upon removal of residence from county in which he was elected.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 1, 1932 in which you request an opinion as to whether or not the County Superintendent of Education of Calhoun Coun-

ty would vacate his office should he move his residence to another county within the State.

I am of the opinion that your inquiry should be answered in the affirmative.

Section 2697, Code of Alabama, 1923 provides that:

"Any office in this state is vacated (3) By (the incumbent's) ceasing to be a resident of the state, or of the division, district, circuit, or county, for which he was elected or appointed."

The Supreme Court, in construing said section in the case of Baker vs. Conway, 214 Ala. 356, 108 So. 18 stated as follows:

"Unquestionably, we think, our statute requires an actual residence by the holder of public office within the political division for which they are appointed or elected, and which it is their duty to serve We do not mean to hold that any temporary absence by a public officer would have that effect. Each case must be decided on its own facts, with a due regard for the elements of intention and actual absence."

From the above it appears that if the County Superintendent of Education actually changes his residence from the county in which he was elected or appointed and is not merely temporarily absent therefrom, he would vacate his office.

Yours truly
THOMAS E. KNIGHT, JR.,
Attorney General.

December 15, 1932.

Hon. M. C. Hester, Clerk,
Circuit Court of Franklin County,
Russellville, Alabama.

A deputy, assistant or clerk in the office of any county officer would be prohibited from dealing in county claims under Section 5016, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 29, 1932 in which you request my opinion as follows:

"I want to know if a stenographer working in the office of the Clerk of the Circuit Court, who is not under any bond nor any authority to perform any official act, would be permitted to deal in and buy county claims."

My answer to the above is in the negative. I call your attention to Section 5016, Code of Alabama, 1923 which is in part as follows: "Any public officer, deputy, assistant, clerk thereof, who, directly or indirectly, by himself or otherwise, purchases, deal, or traffics in any manner whatsoever." This certainly would include the stenographer in the Clerk's office and such stenographer would be prohibited from dealing in claims as prohibited by statute.

I have read the case in the 111th Alabama Report, page 60, which you cite, and find nothing in this case which holds a contrary view from the conclusions reach above.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 15, 1932.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Public school buildings may be used for private school purposes.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 7, 1932 together with a letter of Hon. James C. Dixon, Superintendent of Elba City School, in which inquiry is made as to whether or not public school buildings may be used for private school purposes.

In answer to your inquiry I am of the opinion that public school buildings may be used for private school purposes provided that the same does not interfere with the principal use of the said school building, viz: the regular running of public schools.

This may be done under and by virtue of authority of Section 187 School Code of 1927 which provides in part as follows:

"187. Use of School House for Civic Purposes.—The Board of Schools Trustees shall have the power to authorize the use of the school-

house for such **civic, social**, recreational and community gatherings as in its opinion do not interfere with the principal use of the said school building or property."

"Civic and social gatherings", as used in said section, is surely broad enough to include school purposes. The fact that a school may be a private school does not make it any the less a school purpose. The school is the main purpose and the fact that a tuition fee is charged is merely incidental thereto.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

Copy to
Hon. Jas. C. Dixon,
Supt. City Schools,
Elba, Alabama.

December 21, 1932.

Hon. W. D. Bishop, President,
County Commission of Jefferson County,
Court House,
Birmingham, Alabama.

Construing Subdivision of Section 5498 of the Code as modified by Acts of the Legislature; one approved August 11, 1927 (General Acts 1927 p. 256) and one approved June 16, 1931, (General Acts 1931, p. 298).

Opinion by the Attorney General.

Dear Sir:

I have your letter of December 19th as follows:

"I enclose you herewith a claim filed against Jefferson County by Thomas J. Judge for legal services. You will note that this claim is itemized and is therefore self-explanatory.

"Please advise whether or not this is a lawful claim against Jefferson County, in view of the Act of the Legislature approved August 11, 1932, (Gen. Acts 1927, p. 256) creating the office of county attorney for Jefferson County,"

enclosing a claim of Thomas J. Judge, as follows:

"Jefferson County, Dr.

to

Thomas J. Judge.

"For legal services rendered to the County Commission at its request in advising the Commission as to the constitutionality of certain acts of the legislature; Legal opinions rendered:

As agreed upon—\$500.00.

This charge is made under sub-division 8 of Section 5498 of the Code of Alabama.

Clark vs. Eagerton, 207 Ala. 491.

Jacks vs. Mcore, 66 Ala. 184.

Before me the undersigned authority personally appeared Thomas J. Judge, who being by me first duly sworn deposes and says that the above account is true, just and that no part thereof has been paid and that the same is for services rendered within twelve months prior to this date.

(Signed) Thos. J. Judge

"Sworn to and subscribed before me this the 14 day of November, 1932.

(Signed) Rosa McCombs
NOTARY PUBLIC."

Subdivision 8 of Section 5498 of the Code authorizes Courts of County Commissioners or Boards of Revenue to retain or employ attorneys when it is deemed advisable or necessary and the compensation therefor may be paid out of the general fund of the County.

The General Acts of the Legislature approved August 11, 1927, (General Acts 1927, p. 256), created the office of County Attorney in all counties having a population of 200,000 or more. This Act probably had the effect of segregating Jefferson County from the provisions of Subdivision 8 of Section 5498 of the Code.

The Legislature of 1931, by an Act approved June 16, 1931, (General Acts 1931, p. 298), abolished the County Government of Jefferson County and created an entirely new system of government for said county. It abolished the Board of Revenue and created a commission form of government for said County and the Legislature therefor appointed the personnel of the

Commission.

Among other powers granted to the Commission we find the following provision in Section 6 of the Act:

“Said Commission shall have all the jurisdiction and powers which are or may hereafter be by law vested in the Courts of County Commissioners or Boards of Revenue of this State and the members thereof shall perform all the duties and services and exercise all the powers which are, or may be provided by law for the members of Courts of County Commissioners or Board of Revenue in this State.”

I am of the opinion that Section 6 of the above quoted Act clearly gives all of the powers to the County Commission of Jefferson County that may be lawfully exercised by other county governments in this State.”

Among the other powers granted under the general laws of this State, the county government has the authority to employ counsel as authorized by subdivision 8 of Section 5498 of the Code. It therefore follows that the claim of Thos. J. Judge is a lawful one and a proper charge against the general fund of Jefferson County.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

December 29, 1932.

Hon. J. D. Henry, Chairman,
Board of Revenue,
Anniston, Calhoun County, Alabama.

Officers—One acting as County Treasurer in lieu of County Depository and as Clerk of the Board of Revenue of Calhoun County is not holding two offices of profit under Section 280 of the Constitution.

Opinion by Assistant Attorney General Schews.

Dear Sir:

I have your letter of November 19, 1932, in which you request my opinion as follows:

“Is one who is acting as County Treasurer in lieu of The County Depository of Calhoun County under Section 322, Code of Alabama, 1923,

and as Clerk of the Board of Revenue of Calhoun County under Section 8 of Act No. 286, S. B. 347, approved Sept. 17, 1923 (Local Acts 1923, p. 180) holding two offices of profit at one and the same time within the contemplation of Section 280 of the Constitution of 1901?"

I am of the opinion that your inquiry should be answered in the negative.

Section 280 of the Constitution provides that no person shall hold "two offices of profit at one and the same time under this state," with certain exceptions.

Section 8 of Act No. 286, supra, provides as follows:

"Section 8. The said Board of Revenue may, if they so determine, elect a secretary of said Board, who shall keep the minutes and do clerical work of said board. The salary of said secretary shall be fixed by the board at a sum not exceeding \$600.00 per annum, payable monthly out of the county treasury."

I am of the opinion that a person holding the office of Clerk of the Board of Revenue of Calhoun County under the above quoted section is not holding an office of profit within the meaning of Section 280 of the Constitution. He is merely a voluntary appointee of the board who has no term of office, no fixed salary and may be removed at will.

Without deciding whether or not a County Treasurer appointed in lieu of a county depository under Section 322 Code of Alabama, 1923, is an officer within the meaning of Section 280 of the Constitution, it follows that since the Clerk of the Board of Revenue of Calhoun County is not an officer within the meaning of Section 280, the same person may act in both capacities at the same time.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1933.

Hon. S. H. Blan,
State Treasurer,
CAPITOL.

Certificated Warrants.

Opinion by the Attorney General.

Dear Sir:

I have your letter of January 4th in which you state warrants were issued payable from the General Fund dated the months of January, February, March and April, 1931. You state these warrants were certificated for payment on a fixed date and will be due in January and February, 1933. You inquire whether or not it is legal to pay these warrants from funds accruing to the General Fund during the fiscal year 1932 and 1933.

You also inquire whether or not the provisions of the Fletcher Budget Law prohibit the payment of these warrants, considering the fact the Act excepts certificated warrants from the operation of the law. You also inquire if it will be in violation of any criminal law to pay these warrants at this time.

In answer to your first inquiry I must say that I know of no inhibition of law against payment of the warrants issued against the General Fund for debts accruing prior to the current fiscal year, that is to say 1933, neither do I consider that the Fletcher Budget Law prohibits or attempts to prohibit the payment of these warrants.

In answer to your third question will state that I know of no law penal in its nature which would be violated by the payment of warrants issued for debts during the previous fiscal year out of the funds of the current fiscal year. This of course is based upon the assumption that the money was used for the purposes provided by the Constitution and law and was not expended for purposes other than provided. The warrants which were certificated should be paid from the funds against which the same were drawn.

I also have another letter dated January 4th from you in which you state warrants were issued in 1931 against the Educational Trust Fund and have not yet been paid. Under the law existing in January and February 1931 it was the duty of the Auditor to draw warrants for any debts which existed at the time when the same was itemized and properly audited. These warrants were certificated for payment on a definite date in 1933 and of necessity must be paid out of the revenue of the fiscal year 1933. In view of the fact that the warrants mentioned by you were issued for educational purposes and if the same were proper charges against the Educational Trust Fund, I know of no reason why the same should not be paid out of the revenues of 1932-33.

I am further of the opinion that you will violate no criminal law by the use of 1932-1933 funds to pay the debts incurred in a previous year so long as the money was expended for the purposes provided by the Constitution and statute.

You may apply the same reasoning to the inquiry propounded in your third letter of January 4th relative to the constitutional three mill tax.

I have assumed, of course, that the warrants certificated to be payable out of the particular funds mentioned in your three inquiries were used for the purposes which, under the law and Constitution, they might be used. In short I know of no reason why the obligations of one fiscal year should not be met out of the revenues of the next or succeeding year.

Of course it is to be borne in mind that the necessary expenses of running the essential departments of government must be paid prior to payment of any certificated warrant, this in view of the fact that without the payment of the current expenses of government, the government could not function and there would be no possibility of ever meeting its legal obligations.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 5, 1933.

Hon. Harry K. Martin,
Judge of Probate, Houston County,
Dothan, Alabama.

Under subdivision 3 of Section 9581 of the Civil Code, the Court of County Commissioners is authorized to direct the Probate Judge to recopy and rebind the men's and women's poll tax records, to prepare a card system, to purchase a steel filing cabinet to hold the card index system and other equipment and to receive reasonable compensation for the work done; and the Court has authority to pay for such steel cabinet and material necessary for recopying or rebinding poll tax records and preparing the card system.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of recent date. Your letter follows:

"The Court of County Commissioners of Houston County at its meeting March 8, 1932, passed the following order:

"The Judge of Probate, deeming it necessary to recopy or rebind the men and women's poll tax records in his office in order to secure their contents from damage or loss, submitted the matter to the examination and consideration of the Court. He stated to the Court that in his judgement and opinion a card system instead of the bound volume system would better serve the County and in the

long run be more economical. He further stated that it would be necessary to purchase steel filing cabinet to hold and contain the card index and certain other equipment for the safety and preservation of such poll tax records. Whereupon motion was made and carried without opposition that such recopying of the records or such necessary and pertinent parts thereof as necessary be made, and the Judge of Probate was ordered to proceed to purchase the necessary equipment and to recopy such records or such necessary and pertinent parts thereof as is necessary for which he shall receive reasonable compensation therefor.'

"This order was passed under Section 9584 of the Code of 1923. Before proceeding with this work I write to ascertain whether or not it will be lawful for the County to pay for the work. If it is not lawful for the County to pay for the work, please advise me whose duty it is to recopy and remake this record of the registrations and poll tax payments by such registered voters.

"This County now and for several years has had a loose leaf bound volume, alphabetically arranged and by beats, showing the poll tax records of the registered voters of Houston County. It is this record which will have to be recopied either into another bound volume or on to a card index system, such as I have suggested to the Commissioners and to which they agreed.

"I call your attention to subsection 3 and the last clause of that Section of 9581 of the Code.

"This card index system when completed contemplates an individual card showing the necessary information concerning the poll tax record of the qualified voters of Houston County, alphabetically arranged in Beats. This of itself may be treated and termed 'New Indexes' of the necessary books and records belonging to this office, which certainly was in contemplation under Section 9584, above cited.

"It is evident that to do this work on these records it will be quite tedious and consume considerable time.

"I am informed that several counties in the State have transferred to this system, which is more modern, more adequate and more economical.

"Subsection 3, above cited seems to give the Commissioners authority to order 'New Indexes'. The card index system might be considered 'New Indexes' as well as a recopying of records contemplated under Section 9584.

"There may be some other authority in the Code dealing with this proposition I am not familiar with.

"This work needs to be started right away, but if it would be illegal for the County to pay for it and if there is no duty on the probate judge to do it when it is necessary to be done, I would like to know before I go further with the matter under this resolution of the Commissioners."

I beg to refer you to subsection 3 of Section 9581 of Volume 43 of the Civil Code of Alabama of 1923. Subsection 3 provides:

"3. To keep all the books, papers, and records belonging to his office with care and security; the papers arranged, filed and labeled, so as to be easy reference; and the books and records lettered, and kept with general, direct and reverse indexes; but, without the authority of the court of county commissioners, he must not make new indexes."

It is my judgement that, under the resolution quoted in your letter and the authority of subsection 3 of Section 9581, you have the authority to proceed to recopy or rebind the men's and women's poll tax records in your office, to prepare the card system, and to purchase the steel filing cabinet, and that you have authority to receive from the Commissioners Court reasonable compensation for the work done, and that the Court has authority to pay for the necessary material including the filing cabinet. It is my judgement that the Commissioners Court is authorized under subsection 3 of Section 9581 to pass the resolution quoted in your letter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1933.

Hon. John C. Curry, Chief Clerk,
State Tax Commission,
CAPITOL.

Act No. 104. Senate Bill 88, by Fletcher.
To redefine the duties of the State Auditor.

Construed.
Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 18th, in which you state:

"We ask your formal opinion in the following matters:

"Subsection (a) of Section 5 of An Act of the Legislature known as Senate Bill 88, approved October 19, 1932 and better known as 'State Auditor's Act', provides,

'(a) Those functions and duties of the State Auditor as set forth in Section 240 to 269, inclusive, of an Act of the Legislature, approved September 15, 1919, entitled "An Act to Provide for the general revenue of the State of Alabama," and in Sections 3109 to 3127, inclusive, and Sections 3134 to 3139 inclusive, of the Code of Alabama 1923, all of which relate to the administration of lands sold to the State for unpaid taxes, are hereby assigned and transferred to the State Tax Commission;'"

"Among the functions and duties previously performed by the State Auditor and transferred and assigned to the State Tax Commission by the above quoted subsection are those described by Section 258, page 282, Act of 1919. This section provides for the auditing of the accounts filed by newspaper publishers for cost of advertising lands sold to the State for taxes, and in addition provides for the Auditor's drawing his warrant in payment of such accounts.

"We find that by the terms of that Act of the Legislature approved September 27, 1932, and known as the 'Budget and Financial Control Act' (Section 6) the Auditor had already been relieved 'of all duties pertaining to the settlement of accounts and claims and the keeping of accounting records—as enumerated in the Revenue laws of Alabama, 1929 x x x.' 'The Revenue Laws of Alabama, 1929' mentioned in said Act evidently refers to the compilation of the revenue laws of Alabama published in 1929, in which the above mentioned Section 258 of the 1919 Revenue Act appears as Section 267. If the Budget and Financial Control Act approved September 27, 1932 (Senate Bill 87) had already transferred to the State Comptroller those functions and duties of the Auditor above referred to, how can Senate Bill 88, which was not approved until October 19, 1932, transfer from the Auditor to the State Tax Commission the same functions and duties? You will note that the repealing and effective date clauses of the two acts attempt to give these two bills concurrent jurisdiction and attempt to place them in operation concurrently.

"Does the repealing clause of the last approved bill repeal that part of the first approved bill which is in conflict therewith?

"Section 7 of the Act known as 'State Auditor's Act' (Senate Bill 88) provides,

'Section 7. It is the purpose of this law to assign and transfer the duties of administering lands sold to the State for unpaid taxes to the State Tax Commission until the period for redemption of tax lands has expired and the title to these lands is vested in the State; to transfer the

administration of these lands to the State Commission of Forestry after the title to such lands is vested in the State; to relieve the State Auditor of the administration of the sixteenth section lands, school indemnity lands, the salt springs lands reservation, and the swamp and overflow lands, and to assign and transfer the administration of these lands to the State Commission of Forestry.'

"Among those functions and duties of the State Auditor which were transferred and assigned to the State Tax Commission are those described in Sections 3120, 3122 and 3123 of the Code of Alabama of 1923, which first section is in part at follows:

" ' - - - and when two years shall have elapsed from the date of sale, such portions of lands as have not been redeemed shall be subject to sale by the State; and the State Auditor with the approval of the Governor, may sell the same at private sale - - - '

"Section 3122 of the Code is as follows:

'When lands have been sold for taxes, and bought in by the State, and after the lapse of two years from such sale, no person entitled thereto has redeemed the same, the State Auditor may sell all the right, title and interest of the State in and to such land at the best price obtainable.'

"Section 3123 requires the Auditor to execute a deed to the purchaser purchasing under the provisions of the two foregoing sections.

"If the State Tax Commission is expressly limited by Section 7 of Senate Bill 88 to the administration of the lands sold to the State for unpaid taxes until the period for redemption has expired, how can the State Tax Commission carry out these duties imposed upon the Auditor by Sections 3120, 3122 and 3123 of the Code, all of which duties have to do with the administration of said lands after the expiration of the redemption period? How can the State Tax Commission execute a deed to such land after its administration has passed out of the hands of the State Tax Commission and into the hands of the State Forestry Commission?

"This Act by the provisions of Section 7 attempts to set out its general purposes and seems to restrict the field of operation of those departments which are affected by it, although the preceding sections have attempted to transfer to the several departments specific functions and duties which are not limited in their period of operations. Bear in mind that the restricting section of this Act follows the sections which attempt to broaden the duties and functions of these office.

"With these facts in mind, please state whether the State Tax Commissioner has the right to draw warrants on the State Treasurer for the payment of printer's fees, to execute deeds, to sign releases, to approve

partial redemptions, and to perform the many other functions and duties heretofore required to be performed by the State Auditor under the provisions of law which are mentioned in subsection (a) of Section 5 of said Act, notwithstanding the indefinite manner in which these functions and duties are transferred to the State Tax Commission and notwithstanding the fact that Section 7 of said Act specifically limits the Tax Commission in the time for which it has control of said lands, and notwithstanding the fact that certain of said functions had already been transferred out of the Auditor's jurisdiction to that of the Comptroller by an Act of the Legislature which had previously been enacted.

"Is Senate Bill 88 in conflict with the Constitution of the State of Alabama?"

In answer thereto, I beg to advise that it is my opinion that those provisions of the Act which provide for the transfer of the duties of the State Auditor, as provided for in the specifically named sections govern the transfer of such duties, rather than the general proviso contained in Section 7, if there should be conflict between the specific provisions and the general provisions of Section 7.

Under the Act the duties of the Auditor provided for by Sections 240 to 269, inclusive, of an Act of the Legislature, Approved September 15, 1919, entitled "An Act to Provide for the General Revenue of the State of Alabama, and the duties prescribed by Sections 3109 to 3127, inclusive, and the duties prescribed by Section 3134 to 3139, inclusive, are assigned and transferred to the State Tax Commission."

It is my opinion that it is the duty of the State Tax Commission to administer the duties provided for by these several sections, except those which the Auditor had previously been relieved from by the Act of the Legislature, approved September 27th, 1932, known as the "Budget and Financial Control Act."

Section 6 of the so-called "Budget Act" provides that the State Auditor is hereby relieved of all duties in respect to the settlement of accounts, both receipts and disbursements, and the keeping of all accounting records and of making financial reports now required by law - - - and the keeping of book-keeping and accounting records and the rendering of reports required by law, of which the State Auditor is hereby relieved shall be transferred to the Comptroller.

Therefore, it is my opinion that the duties prescribed by Section 258, Acts 1919, page 282, relating to the auditing of accounts and the drawing of warrants in payment therefor, had previously been transferred to the Comptroller and such transfer is not affected by this Act.

By Section 4, subsections 1 and 2, the Comptroller is required to:

(1) To audit (a) all demands by the State, and (b) to pre-audit all accounts submitted for the issuance of warrants;

(2) To control (a) the payment of all moneys into the Treasury, and (b) all payments from the Treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payments;

Therefore, wherever in the administration of Senate Bill 88 the auditing of accounts or drawing of warrants is required, it is my opinion that these duties devolve upon the State Comptroller.

Said Senate Bill 88 further provides that the duties of the State Auditor as set out in Sections 3096 to 3108, inclusive, and Section 3128 to 3133 inclusive, are transferred and assigned to the State Commission of Forestry.

It is my opinion that the duties prescribed by these sections are clearly placed upon the State Commission of Forestry, unless included therein is the audit of accounts or issuing of warrants, in which event these duties must be performed by the State Comptroller.

Section C of said Senate Bill provides that the duties of the Auditor as set out in Sections 3140 to 3146 inclusive, of the Code of 1923 and Sections 308, 310, 314 and 315 of an Act of the Legislature, Approved September 15, 1919, entitled "An Act to Provide for the General Revenue of State of Alabama," are transferred to the office of the State Comptroller. These duties are specifically assigned to the State Comptroller and hence he is charged with the administration of them. Section 6 of said Act provides as follows:

"Section 6. The State Auditor is also relieved of the administration of all lands which have been sold to the State for taxes unpaid; all sixteenth section school lands; all school indemnity lands; the salt springs lands reservation; and all swamp and overflow lands placed under his jurisdiction in Code Sections 1502 to 1504, inclusive; these duties, together with the Land Clerk and the unexpended appropriation made for his services, are hereby transferred to the State Commission of Forestry, together with all papers, documents, and records relating thereto."

These are general provisions and in my opinion were intended to refer to the general supervision of these lands for the prevention of fire or waste and did not intend to conflict with other provisions of the Act. It is to be noted that the Land Clerk and the papers, documents and records relating to the lands above described are transferred to the State Commission of Forestry. You call my specific attention to the following:

"Among these functions and duties of the State Auditor which were transferred and assigned to the State Tax Commission are those de-

scribed in Sections 3120, 3122, and 3123 of the Code of Alabama of 1933, which first section is in part, as follows:

' - - - and when two years shall have elapsed from the date of sale, such portions of lands as have not been redeemed shall be subject to sale by the State; and the State Auditor with the approval of the Governor, may sell the same at private sale - - - '

"Section 3122 of the Code is as follows:

'When lands have been sold for taxes, and bought in by the State, and after the lapse of two years from such sale, no person entitled thereto has redeemed the same, the State Auditor may sell all the right, title and interest of the State in and to such land at the best price obtainable.'

"Section 3123 requires the Auditor to execute a deed to the purchaser purchasing under the provisions of the two foregoing sections.

"If the State Tax Commission is expressly limited by Section 7 of Senate Bill 88 to the administration of the lands sold to the State for unpaid taxes until the period for redemption has expired, how can the State Tax Commission carry out these duties imposed upon the Auditor by Sections 3120, 3122 and 3123 of the Code, all of which duties have to do with the administration of said lands after the expiration of the redemption period? How can the State Tax Commission execute a deed to such land after its administration has passed out of the hands of the State Tax Commission and into the hands of the State Forestry Commission?"

Clearly confusion and duplication will arise in the administration of these provisions. This would seem to necessarily require the various administrative agencies to work out a practical system. The duties however, prescribed by Sections 3120, 3122 and 3123 are placed upon the Tax Commission and no one else is authorized to perform them. Therefore if it becomes necessary to execute a deed, it is the duty of the State Tax Commission to make the execution.

You refer to Section 7 of said Act which is a general expression of Legislative desire. While this affords us light in interpreting the statutes, it is my opinion that it does not override the specific provisions made.

In conclusion you ask if Senate Bill 88 is in conflict with the Constitution of Alabama. You do not point out any specific section in which said act is in conflict, nor do you indicate that the subject matter is not one with which the Legislature can competently dispose. The general rule is that unless an Act is clearly shown unconstitutional, the presumption is that the same is constitutional. While the Act has many apparently conflicting provisions and raises many administrative problems of difficulty, no specific constitutional objection is pointed out and I will not, at this time, pass on

the constitutionality of the Act, but have attempted to construe it under the legal presumption of constitutionality.

The present Act and the Budget and Control Act, while passed at different times, as shown by Section 10 of this Act, represent the creation of the new system in the State and in my opinion should be construed in pari materia and, therefore, where the duties of the Auditor have been previously transferred by the Budget and Control Act, the present Act does not operate as a repeal of such provisions of the Budget and Control Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

January 7, 1933.

Hon. W. L. Pratt,
Judge of Probate, Bibb County,
Centreville, Alabama.

A candidate must comply with the Corrupt Practice Act where he is a candidate for office and runs in the two primaries as provided by the General Primary Law of 1931.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 3, 1933, in which you request my opinion as follows:

"If a candidate in a Primary Election fails to file his expense account as required by the Corrupt Practice Act can he hold the office for which he is a candidate when he has received a majority of the votes cast."

It is my opinion the failure of the candidate to file a proper itemized statement of his campaign expenses as a candidate for any County or State office as is required by Section 593 and 594, Code of Alabama, 1923, disqualifies him from holding the office for which he is candidate should he be successful. Sections 593 and 594, *supra*, are as follows:

"Filing statements, itemized, of detailed amount of expenditures, contents of such statements.—Not more than ten days, nor less than five days prior to the election and within fifteen days after the election, every committee shall file statements giving in itemized, detailed form, including names, items and detailed amounts, covering all the expendi-

tures made directly or indirectly, and all obligations, debts or liabilities assumed or incurred at the time of filing of said statements. Such statement shall include the names of all contributors of amounts in excess of ten dollars, with amount given by each, and a list of all gifts, loans or contributions made. Such statements shall itemize all moneys expended in sums over five dollars, and shall give the names of the various persons to whom such moneys were paid, the specific nature of each item, by whom the service was performed, and the purpose for which it was expended. There shall be attached to such statement an affidavit subscribed and sworn to by the treasurer of said committee setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys, securities or equivalents for money coming under the control or custody of the committee and by them expended directly or indirectly.

"Affidavit of candidate, when made to statement of expenses.—If such statement is filed by a committee on behalf of any candidate, there shall also be attached to such statement an affidavit subscribed and sworn to by said candidate, setting forth in substance that said statement is to the best of his knowledge and belief in all respects true, and that he has not in person made any expenditures or received any contributions which are not set forth and covered by said statement. The failure of any committee designated by any candidate to file the statements herein required in the form and at the time specified, is a corrupt practice. If the statement required to be made prior to such election is not made by any candidate and committee for him, the name of such candidate shall not be placed upon the ballot to be used in such election."

The above Sections make it mandatory on all candidates to file such a statement and Section 595, Code of Alabama, 1923, fixes the penalty for such failure, and is as follows:

"Penalty for failure to make statement required.—If the statement required to be made after such election is not made by any candidate and committee for him, a certificate of election or nomination shall not issue to such candidate though he be successful in such election. The failure of any other political committee to file the statements herein required in the form and at the time specified is a corrupt practice. The statements herein required to be filed are public documents and shall be open to inspection by any citizens."

If the election is a Primary and the candidate is a candidate of any party holding an election under what is known as the General Primary Election Law of 1931 (General Acts 1931, page 76) in which law provision is made for the holding of two primaries, the first on the first Tuesday in May, 1932, and the first Tuesday in May every two years afterwards, the Second Primary shall be held on the second Tuesday in June next thereafter. A candidate running in each of these primaries must comply with Sections 593 and 594 supra. In other words the Corrupt Practice Act applies to each of said

primaries as fully as it did where there is only one primary as the law was prior to the passage of the 1931 Act.

Yours truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1933.

Hon. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

Interest paid on savings deposits deductible under Article 2, subsection (b), House Bill 12, approved October 22, 1932, in computing net income as defined in said Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 16, 1932, in which you state:

"Please advise this Commission whether or not in your opinion the interest paid or accrued within the taxable year on savings deposits, certificates, certificates of deposits, daily balance, and similar obligations of financial institutions is 'interest paid or accrued within the taxable year on the indebtedness of said business' within the meaning of Article, 2, subsection (b), Section 1, House Bill 12, approved October 22, 1932. For your information a copy of said bill is enclosed herewith."

In answer thereto I beg to advise the provision to which you refer is as follows:

"(2) Interest.—All interest paid or accrued within the taxable year on the indebtedness of said business."

This is exactly the same provision as appears in Subsection B of Section 23 of the Federal Revenue Act of 1932. It is my opinion that a bank deposit constitutes a debt within the meaning of the statute and that interest paid on such indebtedness is deductible in computing the amount of net income.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Under Motor Carrier Act of 1931 Public Service Commission has authority, as regards C. O. D. shipments and similar shipments, to require a fidelity bond with either personal surety or with surety by surety company qualified to do business in this State.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of December 6th has been received. Your letter follows:

"The last sentence of Section 13 of the Alabama Motor Carrier Act of 1931, approved June 19, 1931, reads as follows: 'The Commission (referring to the Public Service Commission) shall also have power and authority to require fidelity bond to protect C. O. D. shipments and other similar shipments.'

"The question has been presented to the Commission by some of the motor transportation companies subject to regulation under the law, whether such carrier is entitled, under the law, to provide a fidelity bond as referred to in the above-quoted sentence with personal surety instead of some fidelity surety company.

"Will you please advise us as promptly as possible whether such fidelity bond may be provided by these carriers with personal surety in place of a surety company as surety, the bond of course in all instances being subject to approval by the Commission."

The last sentence in Section 13 provides: The Commission shall also have the power and authority to require Fidelity Bonds to protect C. O. D. shipments and other similar shipments." In my judgement the Commission has authority to require a fidelity bond with personal surety or by a surety company qualified to do business in this state. It appears that fidelity as used in the last sentence refers to faithfulness, honesty, integrity, faith, loyalty or fealty. The bond must be approved by the Commission in any event. It appears that the word fidelity is intended to describe the general character of the bond and not the sureties who are to execute the bond.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 10, 1933.

Hon. Seth P. Storrs, Commissioner,
Agriculture & Industries,
Montgomery, Alabama.

"Farm Products of whatever nature" as used in Section 2171 of the Code of 1923, includes nursery products.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 1, 1932, in which you state:

"The Perfection Nursery at Foley, Alabama, attempted to sell their nursery stock in Dothan. The City of Dothan demanded a license fee of \$25.00 for the privilege of selling nursery stock within the corporate limits.

"I have advised the Perfection Nursery at Foley that it is my opinion that they have a right to sell in any municipality in the State without paying a license under Section 2171 of the Code of Alabama.

"The City of Dothan claims that nursery stock is horticultural and not agricultural products. The law says 'farm products of whatever nature.'

"Will you kindly advise me on this point and very much oblige."

Answering your inquiry it is my opinion, that the phrase "farm products of whatever nature" is sufficiently broad to cover products such as you describe. It is to be noted however, that Section 2171 of the Code of 1923, only makes it unlawful for a municipality to charge **farmers**, or **others engaged** in the production of farm products of whatever nature, any license for the sale of said articles **produced by them**.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 14, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

"Public highways," as used in Section 22 of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932, includes public highways within incorporate cities and towns."

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of December 22 has been received. Your Letter follows:

"Section 38, Article VI, of an Act approved by the Legislature of Alabama, October 28, 1932 (H. B. 113), provides for the assessment and collection of a scale of mileage taxes from every common carrier and contract carrier using the public highways of Alabama. The statute says that these taxes shall be assessed as compensation for the use of the public highway for each mile actually operated within the State.

"We desire to inquire:

"Whether or not the statute authorizes the deduction from the taxable mileage in the State such mileage as may be made within incorporated cities and towns. In other words, is the mileage made by motor vehicles covered by the Act within incorporated cities and towns taxable under the Act the same as mileage made on the public highways outside such incorporated cities and towns?"

Section 22 of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932 provides that, every common carrier and contract carrier subject to the provisions of this said Act, shall pay to the State as compensation for the use of public highways for each mile actually operated within the state, a certain amount of mileage tax, which tax is set out in detail in Section 22.

Section 1 of the Act defines "public highways" as "every public street, alley, road, or highway (including bridges) in this State, whether within or without the corporate limits of any municipality." In view of this definition I do not think the Commission is authorized to deduct from the taxable mileage such mileage as may be traveled or made within the incorporated cities and towns. Moreover, in the absence of the definition found in the Act, it is my judgement that "public highways * * * within the State" includes public highways within the incorporated cities and towns.

Yours truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller.
CAPITOL.

1. Where land has been sold for payment of taxes and bought in by another than the State, the law does not require the judge of probate, on application to redeem such land, to require evidence of payment to the Tax Collector of the taxes assessable to such lands for the current assessment year, but only the taxes assessed to such land.

2. The question of redemption of land sold for the payment of taxes is purely statutory and each officer having duties with reference thereto must follow the provisions of the statute setting out his duties.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of October 31, 1932, was duly received. You make statement of the following facts:

Certain lands, in Winston County, Alabama, were sold on June 18, 1928, for the payment of the taxes due October 1, 1927, and delinquent January 1, 1928. The land was bought in by another than the state, and the price paid was \$216.75. At the date of sale the said land had again been assessed for the tax assessment year beginning October 1, 1928. Application to the Probate Judge of Winston County for redemption of the said land from the tax sale, was made by the original owner on April 23, 1929. At the date of said application for redemption the land had not been listed by the Tax Assessor of Winston County for the tax assessment year beginning October 1, 1928, and consequently had not been assessed for said year.

Under the facts stated you ask my opinion:

Was it the duty of the Probate Judge to have required evidence of the payment to the Tax Collector of Winston County of the taxes assessable for the current assessment year even though the taxes on said land had not been actually assessed, which taxes were assessable October 1, 1928, prior to the date of redemption and if assessed would have become due and payable October 1, 1929; and if, neglecting to perform such duty, the Probate Judge is liable on his official bond for the amount of such taxes as a loss sustained by state, county and schools by the failure to perform his duty.

In reply will say that duty to be performed by the Probate Judge when application is made to him by a proper party to redeem lands sold for payment of taxes and bought in by another than the state, is purely statutory. This duty is clearly set out in Section 3111 of the Code of Alabama, 1923. This Section of the Code of Alabama requires as follows:

1st. The party desiring to make such redemption shall deposit with the Judge of Probate of the County in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum from the date of sale to date of redemption;

2nd. Such party must deposit with the said Judge of Probate the amount of all taxes which have been paid by the purchaser, which fact

shall be ascertained by consulting the records in the office of the Tax Collector, with interest on said payment at eight per cent per annum;

3rd. If any taxes have been assessed against said land and have not been paid by the purchaser because the same are not due, the party seeking to redeem such lands shall deposit the amount of the taxes assessed for the current year with the Tax Collector, to be by him applied to the payment of such taxes when due, the purchaser shall thereafter be relieved from any further liability on account of such taxes;

4th. In all redemptions of lands from tax sales, the party securing the redemption shall pay all costs and fees due to officers and a fee of one dollar to the Judge of Probate for his services in the matter of such redemption.

After careful examination of the statutes of the State of Alabama, I find no other requirement of the Judge of Probate on the redemption of land sold for taxes and bought in by another than the State, than above stated. This does not provide that the Judge of Probate require evidence of the payment to the Tax Collector of taxes **assessable** for the current year of assessment, when redemption is made, though such taxes have not been assessed. In fact it would be impossible to pay the taxes on such land, when no assessment has been made. It cannot be known what the taxes for the current year are on any property until the assessment is made.

Where land is sold for taxes and bought in by another than the State, the Tax Assessor should, thereafter, until the title is changed from said purchaser, assess said land to said purchaser just as to other owners. His failure to do so is chargeable to him, just as would be his failure to assess the land of other individuals. The purchaser should return such land for taxation and if he fails to do so, he cannot complain that the taxes not assessed were paid by the redemptioner, and he is still liable for assessment of such land for the year not assessed. It is provided in said Section 3111 of the Code of Alabama:

"If any taxes have been assessed against said lands and have not been paid by the purchaser because the same are not due, the party seeking to redeem such lands shall deposit the amount of the taxes assessed for the current year with the tax collector, to be by him applied to the payment of such taxes when done, and the purchaser shall thereafter be relieved from any further liability on account of such taxes."

Of course, if the purchaser does not return such land for assessment and the Assessor thereby fails to list it for assessment, then the purchaser is not relieved from liability on account of the taxes on such land for such year.

There is a different rule in regard to the assessment of lands sold for taxes and bought in by the State. This is governed by Section 259 of the

Act approved September 15, 1919 (General Acts 1919, pages 360-1). Lands bought in by the State are assessed but once, and that in the manner provided by said Section 269. After such assessment, the assessment for each subsequent year is the same and there is no trouble in estimating the amount that must be paid on redemption. But said Section 269 has no application in the case where lands are bought in by another than the State.

In my opinion the Judge of Probate is not chargeable with failure to ascertain the amount of assessment that has not been made; but only to ascertain and require payment whose assessment has been made.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 18, 1933.

Hon. W. A. Clardy,
Judge of Probate Randolph County,
Roanoke, Alabama.

Hospitals.—Real and personal property used for hospital purposes to the amount of \$20,000.00 exempt from ad valorem taxation in cases where 15 per cent of the patients treated are charity patients.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of December 21, 1932, in which you request an opinion of this office as to whether or not it is necessary for a hospital to maintain separate wards for charity patients to come within the exemption set out in subsection (A-1) of Section 2 of H. B. 294, General Acts, 1923, page 252 (253).

It is my opinion that any hospital that has charity cases which amount to 15 per cent of all its patients is exempt from ad valorem taxation on its real and personal property used exclusively for hospital purposes to the amount of twenty thousand dollars.

The Section above cited is as follows:

"All property, real or personal used exclusively for hospital purposes to the amount of twenty thousand dollars, where such hospitals maintain wards for charity patients provided that the treatment of charity patients constitutes at least fifteen per cent of the business of such hospitals.

In my opinion the reason for this exemption was in recognition of the valuable service rendered by hospitals to those unfortunate persons in need of medical attention and the benefits of constant care who are unable to pay for same. I do not think that it was the intention of the Legislature that a hospital must have a separate ward for charity patients to come within the exemption. If the hospital cares for these unfortunates, it matters not if they are treated in separate wards or in the same ward as the patients who are able to pay. The act does not say that the hospitals maintain separate wards for charity patients.

This opinion is, of course, based upon the facts set out in your letter to the effect that the hospital does charity work to the amount of at least 15 per cent of its business.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 18, 1933

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

Alabama Contract Common Carrier Motor Vehicle Act of 1932 is not such a business or occupational license tax as is provided in World War Veterans Exemption Act of 1931; no exemption allowed to World War Veterans under Alabama Contract Common Carrier Motor Vehicle Act of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of December 31st has been received. Your letter follows:

"In the construction of House Bill 113, Tidwell, approved October 28, 1932, it is necessary for the Commission to have your official opinion upon the following question, submitted to us by Hon. W. M. Vaughan, Judge of Probate of Selma, Alabama. The question presented by Judge Vaughan is as follows:

"We have a disabled war veteran, who wishes to make application for a permit as either common or contract carrier and wants to know if he is entitled to the exemptions provided for disabled soldiers under the bill that was passed for such purpose.

"This bill was passed at the regular session of the Legislature in 1931, and approved July 2, 1931.

“Please advise whether he is entitled to the exemptions allowed in the operation of a truck for a living. If he is entitled to such exemption, then he would not have to pay the application fee and would have a credit of \$15.00 additional to apply on mileage.”

The World War Veterans License Exemption Act of 1931 provides for exemption from business or occupational license taxes. The Alabama Contract Common Carrier Motor Vehicle Act of 1932 provides for the payment of an excise tax. In my judgement, the excise tax provided by the Alabama Contract Common Carrier Motor Vehicle Act of 1932 is not such a business or occupational license tax as is provided by the World War Veterans Exemption Act of 1931. I am of the opinion that no exemptions are authorized to World War Veterans under the provisions of the Alabama Contract Common Carrier Motor Vehicle Act of 1932.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 18, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

Neither the Motor Carrier Act of 1931 nor the Motor Carrier Act of 1932 (House Bill No. 113) regulates or covers the operation of busses by a company in conveying its employees from their homes to their place of work, where such operation is without profit.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of December 1, 1932, has been received. Your letter follows:

“The following question has been presented to the Public Service Commission for determination in connection with the scope and requirements of House Bill 113, approved October 28, 1932, providing for regulation of contract carriers and certain common carriers as shown in such Act.

“The question is as follows:

“The A. B. Company operates a passenger motor bus for transporting its employees from their residences located some distance from the works of the Company, over the public highways, to the Company's works and return each working day to the homes of such employees.

For the services rendered by the Company for such employees a nominal charge is made to cover the cost of transportation. The bus is not operated for hauling passengers other than the Company's employees and is not operated for profit, although at times the operation may show profit, but generally it is operated at a loss.

"Heretofore the Commission ruled that such an operation did not come within the Alabama Motor Carrier Act of 1931, for the reason that it was not a common carrier operation, the operator of the bus not holding himself out to carry the public generally, or whomsoever might call upon him for transportation.

"Will you please advise us as promptly as possible whether this operation comes within the scope of either the Alabama Motor Carrier Act of 1931 or the above named House Bill 113, approved October 28, 1932?"

After examining each and every Section of the Motor Carrier Act of 1932 (House Bill No. 113), it is my judgement that the Act has no application to a situation such as you describe in your letter. I do not think the spirit or the letter of the law covers the operation of such busses. I do not think the operation of such busses fall within the scope of either the Motor Carrier Act of 1931 or the Motor Carrier Act of 1932 (House Bill No. 113). Such busses appear to be operated wholly without profit.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 18, 1933.

Hon. John S. Golson,
Judge of Probate,
Greenville, Alabama.

Claims against County which are not presented to the Board of Revenue or Court of County Commissioners for allowance, are barred by the statute of limitations after twelve months.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 8, 1932, in which you request my opinion as follows:

"The Butler County News, a newspaper in this County, has filed its bill for newspapers and bound volumes of the paper furnished for the

years 1921 to 1929, inclusive. This bill was not presented until the last term of the Commissioners Court, and we have taken the position that we cannot pay it, for the reason that it was not filed within a year from the time the account became due."

Your position is correct. This claim, in our opinion, is barred by the statute of limitations of twelve months, under Section 228, Code of Alabama, 1923, which is as follows:

"Claim barred if not presented.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

Biennial Report of the Attorney General 1928-30, p. 789;

State ex rel. City of Mobile Vs. Board of Railroad Commissioners of Mobile City, 180 Ala. 514.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

January 18, 1933.

Hon. H. F. Lee, Associate Commissioner,
Alabama Public Service Commission,
Montgomery, Alabama.

Under Motor Carrier Act of 1932 (H. B. No. 113) it is the duty of the Public Service Commission to furnish only one distinguishing plate to each motor vehicle for which a permit has been issued. If such free plate is destroyed or lost no duty devolves upon the Commission to furnish another tag free of charge. If another plate is required, it is the duty of the Commission to furnish such additional plate, for which the Commission may make a reasonable charge.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of November 28, 1932, has been received. Your letter follows:

"Section 10 of an Act of the Legislature of Alabama approved October 28, 1932 (H. B. 113), makes it the duty of the Commission to furnish to the Probate Judges of Alabama free of charge the distinguish-

ing plates to be used by the motor carriers obtaining permits under said Act. It is further provided in this Section that the Probate Judges shall issue one distinguishing plate for each motor vehicle operating under permits and that such plates must be conspicuously displayed on the vehicles at all times.

"In view of the possibility of destruction or loss of distinguishing plates by artificial or natural means after they are issued to the holders of the permits, we desire to inquire:

"1. Whether or not the holder of a permit is entitled to more than one distinguishing plate for each vehicle free of charge; and

"2. In the event such holder is entitled to but one such plate for each vehicle free of charge is the Commission authorized to make a reasonable charge to the holders of permits for plates to take the place of those originally issued?"

The Motor Carrier Act of 1931 (H. B. 113) has been examined, and each Section thereof. It appears that, under the Act, it is the duty of the Commission to furnish only one distinguishing plate to each motor vehicle. It is presumed that the plate furnished will be made of durable material, such material as will stand the various weather conditions and the wear such a plate will be subjected to. If the plate is lost or destroyed, without fault of the commission, it is my judgement that no duty devolves on the Commission to furnish a new plate, free of charge. It is my judgement that the Commission may make a reasonable charge for such extra or additional distinguishing plate. I do not think the Act contemplates that more than one free plate shall be furnished. If a second free plate may be furnished, then why not seven or ten free plates? It is my judgement that the duty devolves upon the operator of the vehicle to furnish such new or extra or additional plate, that is, to procure another plate from the Commission, for which the Commission may make a reasonable charge.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 20, 1933.

Dr. A. F. Harman,
State Superintendent of Education,
Montgomery, Alabama.

Schools—State Aid under Act No. 370, H. B. 350, approved July 8, 1931, must be actually and presently used on the retirement of indebtedness.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 29th, 1932, relative to an application of the County Superintendent of Education of Barbour County for State Aid under Act No. 370, H. B. 350, approved July 8, 1931. In said application it is stated that there is an outstanding warrant for \$5,000.00 due in 1936; the amount of the aid asked for is \$1,000.00 to be used as a sinking fund and to be set aside until the original warrant is due in 1936.

You request my opinion as to whether or not under Act No. 350, *supra* governing State Aid or indebtedness, you have authority to approve the application under the terms above set forth.

In answer to your inquiry, I first wish to state that the amount of Aid available as contemplated in said Act is payable immediately, regardless of whether or not the indebtedness incurred is presently due, but the amount of the State Aid together with the matched funds must be **actually and presently used on the retirement of the indebtedness**.—Opinion of the Attorney General to State Superintendent of Education under date of September 30, 1931.

In view of the above, it is my opinion, that State Aid cannot be granted unless the amount, together with the matched funds, are actually and presently used on the retirement of the indebtedness and cannot be held as a sinking fund until the maturity of the debt.

In other words, if the amount of State Aid, together with the matched funds, is actually and presently used to pay part of the indebtedness, the aid should be granted, regardless of whether or not the debt is presently due.

I am herewith returning the application above referred to.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 20, 1933.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Commissions—Bond must be filed within forty days after election.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of January 5, 1932 which is as follows:

"This office has received in the past few days quite a few notices from the Judges of Probate of the different counties to the effect that certain officials have qualified by filing bond having been elected on November 8, 1932.

"Section 2579 of the Code of 1923 sets out the officials who shall receive commissions. I also call your attention to Section 2607 which states that bonds filed with the judge of probate must be filed within forty days after the declaration of election or appointment to the office.

"The notices that we are receiving from the Judges of Probate show that these bonds were filed anywhere from the 27th of December to date, and the time limit in accordance with Section 2607 has, therefore expired.

"The question is, shall the Secretary of State issue these commissions upon the authority of the judge of probate showing the dates that these officials qualified or shall the Secretary of State's office hold these notices and notify the judge of probate that such officials have not qualified within the proper time limit. It is requested that an opinion be rendered if possible today in order that we might notify the judges of probate of your decision."

It is my opinion that in all cases where the probate judge makes known to you that an official has qualified that it is your duty to then countersign the commission and issue same as the Probate Judge is presumed to do his duty and it is incumbent upon him to notify the appointing power in cases where an official who is required to file his bond in the probate judge's office has failed to do so. However, where the probate judge expressly notifies you that an official has not qualified in the time required by law then it is my opinion that you should not issue the commission.

Section 2581, Code of Alabama, 1923 is as follows:

"No commissioned officer of this State, required by law to give bond, shall receive his commission until he has made his bond, and had the same properly approved and filed. In all other cases, commissions may issue, on the production of the certificate of election to the person therein named."

Under the above section it appears to me that if it affirmatively appears from the correspondence of the probate judge that the bond was not filed within the time required by law that such officer should not receive his commission.

January 20, 1933.

Hon. J. H. Green,
Clerk of the Circuit Court,
Decatur, Morgan County, Alabama.

Bond of Circuit Clerk under House Bill No. 689 by Bains approved
November 9, 1932.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 30, 1932, in which you request my opinion as follows:

"I would like for you to give me your opinion as to whether or not, the Circuit Clerks will have to make a new bond, if their present bond is not as much as required under this Act, or would this new law take effect at the beginning of the next term of office."

I call your attention to Section 19 of an Act approved November 9, 1932 House Bill 689 by Bains. Said Section is as follows:

"Section 19. That where the official bond of any County officer of any County, duly qualified and commissioned prior to the passage and approval of this Act, has been fixed and approved, and such bond is in the judgement of the Commissioners Court, Board of Revenue or like County governing body in such an amount and secured by such surety or sureties as fully to protect the public interest and safeguard public moneys, such bond shall be and remain and continue in full force and effect, and such officer shall not be required to make any new bond except as in the event such bond should become insufficient and an additional bond be required as provided in this Act."

You will note that this section provides that if a bond given by any county officer is deemed sufficient by the Board of Revenue, Court of County Commissioners or like governing body, the officer does not have to make a new bond under the Act, supra, but it will be noted, however, that if at any time, the Board of Revenue, Court of County Commissioners or other like governing body of the county, shall determine that a new bond should be given at any time, they may request it.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 20, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Appropriations—Appropriations for Pasteur Treatment construed.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 11, 1933 in which you request my opinion as to whether or not the salary of employees of the Health Department, who are engaged exclusively in the manufacture of vaccine, necessary for the Pasteur treatment can be legally paid from the appropriation for the Pasteur Treatment under Section 37, subsection 13 of Act No. 328, S. B. 235, approved November 9, 1932.

I am of the opinion that your inquiry should be answered in the affirmative.

Section 37, subsection 13 of the appropriation bill in question appropriated \$30,000.00 a year for the "Pasteur Treatment." This appropriation is sufficiently broad to include not only the cost of actually administering said treatment but also the cost of the vaccine. The cost of the vaccine may be the price on the open market or the cost of manufacturing same if done by the Health Department. The cost of manufacturing would necessarily include the compensation of the employees who do the actual work as well as the cost of the ingredients used.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 24, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Current revenue for school purposes may be used to pay the requisitions drawn against the Public School Fund for present expenditure.

Opinion by the Attorney General.

My dear Sir:

I have your letter of January 23rd. You inquire whether or not after consideration of the law relating to the Public School Fund, and particu-

larly after a consideration of Section 10 of the School Code of 1927, you should honor the requisitions of Dr. A. F. Harman, State Superintendent of Education, amounting to \$1,000,000.00 drawn against the Public School Fund. It is understood that this money will be used at the present time. I also assume that the requisitions against the Public School Fund contemplate an expenditure of this money for school purposes, and that the money paid on each requisition will be spent for the purposes for which the Fund was established.¹

Apparently, the only question of doubt in your mind is whether or not this Fund should accumulate for a year prior to its expenditure for the purposes provided by statute.

From the accompanying data submitted with your letter evidently you have been under the impression, that in theory, if not in practice, these funds should accumulate in the Public School Fund for the period of the fiscal year prior to the disbursement for school purposes. You must have arrived at this conclusion by a construction placed upon an Act approved October 1, 1903, (General Acts 1903, page 353). You also refer to Section 10 of the School Code of 1927 as a re-write of the Act of 1903. I am not convinced that the Act of 1903 and Section 10 of the School Code of 1927 should be so construed, that is, that this Fund should not be expended until it has accumulated for a year.

You state in your letter that it has been the practice for several years to pay these requisitions from current collections and that it has been the custom to use current revenue for this purpose. The practice and custom is a matter of common knowledge. The Legislature has rewritten, without practical change, the Act of 1903 repeatedly.

By an Act approved October 1, 1909, the funds in the State Treasury except funds controlled by the Constitution, were consolidated. I conceive that funds controlled by the Constitution contemplate within the meaning of the Act of 1909, such funds as the Constitution provided should be expended for certain purposes, and not that the current revenue might not be used for the purposes provided by the Constitution and statutes. Evidently the Legislature has been under the same impression.

It might be well here to refer to the case of *State vs. Hobbie Grocery Company*, 142 So. page 46. In that case it was said that the administrative construction of statutes pertaining to the use of revenue has not been casual, occasional, or incidental, but has been of daily State-wide application in the execution of the law by all the agencies charged with duty in that respect, and that the State's revenue from the tax is substantial and the constant subject of legislative attention. With equal force the same may be said of the collection and disbursement of the current collections of the State's revenue for school purposes. And this revenue has certainly had the constant legislative attention.

"Under these conditions, the re-enactment of the statute without change may be treated as a legislative approval of the departmental construction of the statute, quite as persuasive as the re-enactment of a statute, which has been judicially construed. 24 R. C. L. Section 274, page 1043, et seq.; State Tax Commission vs. Safety Transfer and Storage Company, 18 S. W. (2nd) 991."

Certainly this custom of handling current collections for school purposes and the departmental construction placed upon the propriety of its use can be said to have had legislative approval. It appears that the reasoning of the Hobbie case is controlling in this instance.

You enclose a letter from Dr. Harman accompanying the requisitions against the Public School Fund, total amount of which requisitions is \$1,000,000.00. In this letter he states that he understands that these requisitions are to be paid from any balance of the Public School Fund on hand October 1, 1932, and that he further understands that they are to be paid from **current** collections for the year 1932-1933 which have been applied to the Public School Fund.

You state this to have been a custom for several years. The data submitted along with your request shows that it has been the custom to pay these requisitions out of current collections for a period of twenty years or more.

Dr. Harman also states that the certificate which must be furnished him on October 1, 1933, or as soon thereafter as practicable, in order that he may apportion the Public School Fund for the year 1933-1934, as required by law, will be an **estimate** of the Public School Funds available for the year 1933-1934 not based upon funds actually in the Treasury but upon the assessments of the current year 1932-1933.

You, of course, could not furnish Dr. Harman a certificate that the funds which he had already requisitioned and spent during the year 1932-1933 were in the Treasury of the State for expenditure during the year 1933-1934.

I am of the opinion that the requisitions submitted by Dr. Harman should be paid as has been the custom of twenty years or more.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 28, 1933.

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

1. A deed executed by Federal Land Bank of New Orleans, La., by the Joint Stock Land Bank of Montgomery, Ala.; by the Federal Reserve Bank, Atlanta, Ga.; by the Reconstruction Finance Corporation; by Secretary of Agriculture, Seed Loan Division; or by a National Bank, requires the payment of the deed filing tax provided for by Section 21 of Act No. 163, approved July 22nd, 1927, to be paid by the grantee or his assignee on presenting such deed for record.

2. A mortgage executed to Regional Credit Corporation of Jackson, Miss.; to the Federal Land Bank of New Orleans, La.; to the First Joint Land Bank of Montgomery, Ala.; to the Federal Reserve Bank of Atlanta, Georgia; to the Reconstruction Finance Corporation; to the Secretary of Agriculture, Seed Loan Division; or to a national bank, does not require the payment of the filing tax provided by section 4½ of Act No. 172, approved August 22nd, 1923, on presentation for record by the mortgagee.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 23rd, 1932, was duly received. You ask my opinion:

1st. Is there a filing tax due the State of Alabama on deeds when offered for record executed by:

- (a) Federal Land Bank of New Orleans, La.,
- (b) First Joint Stock Land Bank, Montgomery, Ala.,
- (c) Federal Reserve Bank, Atlanta, Ga.,
- (d) Reconstruction Finance Corporation,
- (e) Secretary of Agriculture, Seed Loan Division,
- (f) National Banks.

2nd. Is there a filing tax due the State of Alabama on mortgages, when offered for record, executed to:

- (a) Regional Agricultural Credit Corporation of Jackson, Miss.,

- (b) Federal Land Bank of New Orleans, La.,
- (c) First Joint Stock Land Bank of Montgomery, Alabama,
- (d) Federal Reserve Bank of Atlanta, Ga.,
- (e) Reconstruction Finance Corporation,
- (f) Secretary of Agriculture, Seed Loan Division,
- (g) National Banks.

In reply to each and every division of the first question will say that the fact that a deed is executed by the Federal Land Bank of New Orleans, Joint Stock Land Bank of Montgomery, Ala., Federal Reserve Bank of Atlanta, Ga., Reconstruction Finance Corporation, Secretary of Agriculture, Seed Loan Division, or a National Bank in no way exempts the grantee in such deed from the payment of filing tax required by Section 21½ of Act No. 163, approved July 22nd, 1927. It is the grantee whose interest it is to have such deed recorded. The grantor is in no way concerned about such record, — Biennial Report of Attorney General, 1926-1928, p. 681. Such grantee is no more exempt from paying the deed filing tax than the grantee in any other deed. Such grantee must pay the filing tax on offering such deed for record.

In reply to your second question will say that the filing tax on mortgages executed to Federal Land Banks and to Joint Stock Land Banks and Loan Bonds are exempt from this filing tax by Section 931, Title 12, U. S. C. A. - Federal Land Bank of New Orleans vs. D. W. Crosland, Judge of Probate, 67 U. S. L. Ed. 703.

Federal Reserve Banks are exempt from the filing tax on mortgages executed to it by Section 531, Title 12, U. S. C. A.

Reconstruction Finance Corporation, the Secretary of Agriculture, Seed Loan Division and the Regional Agricultural Credit Corporation of Jackson, Mississippi, are each exempted from the payment of the mortgage filing tax provided by Section 4½ of Act No. 172, approved August 22nd, 1923, by Section 610, Title 15, U. S. C. A.

National Banks are exempted from the payment of said mortgage filing tax, on mortgages made to it, on presentation for record by such bank, by Section 548, Title 12, U. S. C. A.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 28, 1933.

Mrs. A. M. Tunstall, Director,
Child Welfare Department,
CAPITOL.

Chairman Coffee County Child Welfare Board—Judge of Inferior
Court of Coffee County.

Opinion by Assistant Attorney General Lawson.

Dear Madam:

This is to acknowledge receipt of your letter of January 25, 1933 in which you ask an opinion of this office as to who is the Chairman of the County Child Welfare Board of Coffee County. Your question is worded as follows:

"Is the Probate Judge of Coffee County Chairman of the County Child Welfare Board or is the Judge of the Inferior Court of Coffee County Chairman of the County Child Welfare Board?"

County Boards of Child Welfare are provided for by Article 4 of Chapter 2 of the Alabama Code, 1923. Sections 143 and 148 deal with the Chairman of such a board and are as follows:

"Section 143. The Judge of the Juvenile Court of any county having exclusive jurisdiction of dependent, neglected and delinquent children shall, whenever the court of county commissioners or board of revenue of the county shall by resolution declare that a county board of child welfare should be established in said county, and shall designate one of its members to serve as a member of such county board of child welfare, and whenever, the county board of education shall by resolution declare that a county board of child welfare should be established in said county, appoint three citizens, two of whom shall be women who together with the judge of the Juvenile Court, the chairman of the county board of education, the county superintendent of education, and the member designated by the court of county commissioners or board of revenue of the county, shall constitute the county board of child welfare."

"Section 148 The Judge of the Juvenile Court shall be the chairman of the county board of child welfare. It shall be his duty: 1. To call the first meeting of the board at any place designated by him; 2. To transmit to the state department of education and the state child welfare department the names and addresses of every appointed member of the board; 3. To call a meeting of the board not less than once every six months and at such other times as he may deem necessary, and to determine the place of every such meeting; but any three members may by giving ten days notice to the other members, call a meet-

ing and fix the place thereof; 4. To preside at all meetings of the board. In case the judge is absent the board may select a temporary chairman.

It thus affirmatively appears that the Judge of the Juvenile Court is the Chairman of the said county board of child welfare.

The determination of your question naturally depends upon who is judge of the juvenile court of Coffee County.

It appears from Sections 3528-9, Chapter 100, Article 1 of the Alabama Code, 1923 that in the absence of some local or special act, that the Probate Judge of said county would be the chairman of said board.

Subdivision (4) of Section 3528, *supra* is as follows:

"(4) The word 'court' and the words 'juvenile court' when used in this chapter shall, unless otherwise qualified, mean the probate court of the county, sitting as the juvenile court, for the hearing of cases or the disposition of any matter arising under the provisions of this chapter. The word 'judge' or the words 'judge of the juvenile court' shall, when used in this chapter, unless otherwise qualified, mean the judge of the probate court of the county sitting as the juvenile court for the hearing of cases or the disposition of any matter, arising under the provisions of this chapter."

Section 3529 as amended by Acts, 1931, pages 355-6, is as follows:

"The probate courts of the several counties of the state, except in those counties in which special courts having exclusive jurisdiction over children under sixteen years of age or over and for the purposes declared in this chapter have been or shall hereafter be established by special acts of the Legislature, shall have original and exclusive jurisdiction of all proceedings coming within the provisions and terms of this chapter and shall have original and exclusive jurisdiction to hear, determine and adjudicate all questions and cases coming within said provisions and terms and each such court shall in the exercise of the jurisdiction herein conferred by this article, be known as the juvenile court of..... county. * * *

The statutes above set out affirmatively show that the Probate Court is the Juvenile Court of a county and the Probate Judge, Judge of the Inferior Court, unless and until the jurisdiction is conferred on some other court by special act. This is specially mentioned in the law and it seems to have been contemplated that from time to time such transfers would probably be made.

An Act passed by the 1931 Legislature, General Acts 1931, pages 637-8, approved July 23, 1931, which Act is incorporated in the 1932 Supplement

to Mitchie's Code of 1928, as Section 3528(1) is as follows:

"The jurisdiction of juvenile courts in all counties of this State having a population of thirty-five thousand or less according to the last or any subsequent federal census be and the same is hereby transferred to and vested in county inferior courts, and the judges thereof, which now are, have been or may hereafter be, established in any such counties. All such county inferior courts shall have exclusive jurisdiction under this section, and no other court in such counties shall have jurisdiction in such matter."

The last federal census gives Coffee County a population of approximately 32,000 and therefore comes under the provisions of the statute above quoted if there is an inferior court in such county.

Such an inferior court for Coffee County was created by the Legislature of 1931, by an Act passed over the Governor's veto on July 25, 1931, local Acts, 1931, page 183.

In view of the facts above set out, viz., that there is an Inferior Court of Coffee County, that Coffee County by the last federal census is given a population of 32,000, that in such counties juvenile jurisdiction is transferred to such inferior courts, that the judge of the juvenile court is chairman of the county child welfare board, I am of the opinion that the Judge of the Inferior Court of Coffee County is Chairman of the County Child Welfare Board.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 31, 1933.

Hon. J. C. Courtney,
Assistant Solicitor,
Mobile, Alabama.

H. S. 335, Acts 1931, page 636 — Constitutional.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of December 27, 1932 which is as follows:

"A question as to the constitutionality of H. B. 335 enacted during the 1931 session of the Legislature has arisen. This act is found on page 636 of the General Acts of 1931. Will you please advise me

whether or not, in your opinion, this act is constitutional. In view of the fact that it becomes effective on January 1st, 1933, we would appreciate your opinion as early as you conveniently can give it."

The Act in question is as follows:

Title. "Requiring every public service corporation engaged in transportation doing business in this State and employing public labor to pay employees every two weeks or twice each calendar month, and to provide for a penalty for a violation thereof.

"Be it enacted by the Legislature of Alabama:

"Section 1. That every public service corporation engaged in transportation doing business in this State, employing as many as fifty or more employees shall be required to make full payment to employees for services performed as often as once every two weeks, or twice during the calendar month, and such payment or settlement shall include all amounts due for labor or services performed up to not less than fifteen days previous to the time of payment.

"Section 2. That any Public Service Corporation engaged in transportation who violates this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25.00 nor more than \$250.00 for each offense, and each day's violation against each employee shall constitute a separate offense.

"Section 3. Provided that the provisions of this act shall not become effective until January 1, 1933.

Approved July 22, 1931.

It has been suggested by parties affected by said act that same is unconstitutional for two reasons, namely: (1) That it is violative of that equality and uniformity of rights and privileges which are secured to all persons by both State and Federal constitutions and that it creates an unequal and unjust discrimination against a particular class of public service corporations: (2) That it is violative of that portion of Section 45 of the Constitution of Alabama which is as follows: "Each law shall contain but one subject which shall be clearly expressed in its title."

It is true that similar laws have been held unconstitutional by several state courts on the ground first mentioned but it is my opinion that the question is now definitely settled by the case of Erie R. R. Co. vs. Williams, 233 U. S. 685 in an opinion by the U. S. Supreme Court wherein it was held that such a law was constitutional. In view of that decision, part of which is hereinafter set out, I am compelled to rule that said act is not unconstitutional on the ground first above mentioned.

"Whether a statute imposes an unjust burden depends upon its validity; and whether the public welfare is subserved thereby is, in the first instance, to be determined by the legislature, whose action the courts will not review unless unmistakably and palpably in excess of legislative power."

"In determining time and manner of payment of wages of employees the legislature can consider the fact that to those who work for a living there is an advantage in the ready purchasing power of cash over deferred payments involving the use of credit."

"Where Congress has not acted on the subject, and there is no prohibition on interstate commerce, a State may regulate matters within its police power although incidentally affecting interstate commerce. Congress has not as yet acted in regard to the time and manner of payment of wages or employees of interstate carriers."

"A State statute regulating periods of payment of wages of railroad employees which is limited to the employees wholly within that State or whose duties take them from that State to other States and which is not applicable to those employed in other States, is not a direct burden on interstate commerce."

"As an employer cannot be heard to attack a state statute relating to payment of wages, on the ground that it denies to some of his employees the equal protection of the law because they are not within its protection.

"The provision of the Labor Law of New York of 1907 requiring semi-monthly payments in cash of wages of employees of certain specified industries, including railroads, is not unconstitutional as denying due process of law, or as to a railroad company incorporated in that State, as impairing the obligation of the charter contract; nor is it, as it has been construed by the highest court in that State, a direct burden on interstate commerce; but, as so construed, it is a valid exercise of the police power of the State."

I am also of the opinion that said act is not in violation of that part of Section 45 of the 1901 Constitution of Alabama which is as follows:

"Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a Code, digest or revision of statutes . . ."

It is suggested that the act is unconstitutional because of the fact that while the title of the act used the words, "public labor," the body of the act refers to employees.

I do not consider this a violation of said Section 45 in that the title of the act does not provide for the payment of public laborers but requires public service corporations employing public labor to pay employees. The body of the act likewise refers to the payment of employees. The fact that the title might be broader than the body of the act does not render it unconstitutional unless the variance is such as to be misleading. - **Mobile Transportation Co. vs. City of Mobile**, 30 So. 645, 128 Ala. 325.

The purpose of the act is to regulate public service corporations engaged in transportation and this purpose is clearly expressed in the title.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 3, 1933.

Hon. Charles E. Carmichael,
Tuscumbia, Alabama.

An employee of a railroad, even though he be a member of the State Legislature, is not prohibited from accepting a pass over said railroad for which he is counsel.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 5th, 1933, in which you request my opinion as follows:

"I have been tendered a position with a railroad and I want to know if it would be against the law for me to accept a pass as part of the compensation for my services to the said railway company? Please let me have your reply at your earliest possible convenience as I would like to use the pass in the near future."

I see no reason why you could not be employed as counsel for any railroad. You are a regular licensed, practicing attorney in Alabama and hold yourself out as such, and should your services be desired as an attorney for any concern, I see no impropriety in your accepting the same. The employment and the issuance of a pass to you by a railroad, even though you be a member of the legislature, would not, in my judgement, be in violation of Section 244 of the Constitution of Alabama, 1901. I think, as an attorney for any railroad, you come under the exceptions set out in Section 5373, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 3, 1933.

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

1. Act No. 267, approved November 8, 1932, is a general law, and did not require advertisement as provided by Section 106 of the Constitution of the State of Alabama.

2. Under the authority given by said Act No. 267, the Court of County Commissioners of any County having less than eighteen thousand population according to the last Federal Census, may use all or any portion of twenty per cent of the gasoline fund derived from the excise tax on gasoline, or other liquid motor fuel levied under the Act of the Legislature of Alabama, named, for the purpose of paying the past due and future salaries of teachers for teaching school in class room work in such counties.

3. The appointment of teachers and fixing their salaries is done by the County Board of Education, and the Court of County Commissioners has no authority to enter into contracts with reference thereto. Their authority is that given by statute; and, so far as said gasoline is concerned, to use no more than twenty per cent of the funds derived from the excise tax on gasoline or other liquid motor fuels, levied under the Act of the Legislature of Alabama, approved February 10, 1923, for the purposes named in said Act No. 267, approved November 8, 1932, whether any shall be used is left in the discretion of the Commissioners Court.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 14, 1932, was duly received. You request my opinion:

1. Is Act No. 267, approved November 8, 1932, constitutional?

2. If constitutional,

(a) How must the Commissioners Court use the 20 per cent of said gasoline fund?

(b) Can the Commissioners Court use less than 20 per cent for the purpose named?

(c) Can the Commissioners Court appropriate said 20 per cent of said fund for months ahead of receipt of funds?

In reply to the first question will say that all Acts of the Legislature are presumed to be constitutional so long as they contravene no provision of the State or United States Constitution. In your letter you fail to suggest any such contravention and on reading and considering the Act I fail to find any such contravention.

It is true the Act was passed as a general law, and that its provisions at present do not apply to any except five of the counties of the state; but these counties are distributed about over the State and any County hereafter falling within the class named will fall within the operation of such statute. The difference in population of the class of counties to which the law applies is, in my opinion, as substantial as could be stated, and, in my opinion, there is nothing in the Act upon which a Court could say that the classification was not made in good faith.

State ex rel Gunter v. Thompson, 193 Ala. 561;

Ward vs. State, 224 Ala. 242;

Reynolds v. Collier, 204 Ala. 38.

In my opinion a Court could not well say as a matter of law, that the problem of sustaining the schools in counties of less than eighteen thousand population is the same as in counties of greater population. In my opinion the Act is a general law.

In reply to subdivision (a) of the second question will say that the Commissioners Court of a County having a population of less than eighteen thousand according to the last preceding census of the United State are authorized by said Act No. 267, approved November 8, 1932, to use twenty per cent of the funds derived from the excise tax on gasoline, or other motor fuels, levied under the Act of the Legislature of Alabama, approved February 10, 1923, etc., for the purpose of paying the past due and future salaries of school teachers for teaching school in class room work in the respective counties. Of course, the amount of salary to be paid a teacher is fixed by the County Board of Education. When the teacher has been appointed by the County Board of Education and his salary fixed, if the funds at the command of the County Board of Education are not sufficient to meet the payment, then the Court of County Commissioners may use such portion of such twenty per cent of the said gasoline funds as may be necessary to finish such payment. The question of so using such funds, in my opinion, is left in the discretion of the Court of County Commissioners, to be used in case the Court deems it proper to do so.

The foregoing also answers subsection (b) of the second question.

In answer to subdivision (c) of the second question will say that in my opinion said statute does not authorize the Court of County Commissioners

to enter into any contracts with reference to the use of said fund; but simply to use any part of the twenty per cent of such fund for the purposes named in the statute. when, in the judgement of the Court of County Commissioners, it can and should be done. In my opinion it is not a case where means must, since there are other uses for which, under the law, such funds may be used, if not used under power given by said Act.

Yours truly,
THOMAS E. KNIGHT,
Attorney General.

February 3, 1933.

Hon. Wm. W. Brandon,
Judge of Probate, Tuscaloosa County,
Tuscaloosa, Alabama.

The filing tax for a deed is measured by the value of the property conveyed by the deed, and where a mortgage debt is paid by execution of a deed, there is no mortgage left to deduct as provided by Section 22½ of Act No. 163, approved July 22, 1927, on presentation of such deed for record.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 19, 1932, was duly received.

You enclose copy of deed executed by Jackson Securities & Investment Company to the Prudential Insurance Company of America. The recited consideration in the deed is seventy-five dollars, while, as you state, the value of the property conveyed was, in fact, twenty-two hundred dollars. The deed was of date December the 12th, 1932. The facts in the case are very incompletely stated; but from what you state and what is stated in the copy of the deed, I assume the following to be facts:

The Jackson Securities and Investment Company, a corporation, executed a mortgage to The Prudential Insurance Company of America to secure a loan, and The Prudential Insurance Company had the mortgage recorded and paid the filing tax. When the mortgage debt fell due and was not paid, by agreement the Jackson Securities & Investment Company deeded the land described to The Prudential Insurance Company of America in payment of the mortgage debt and for seventy five dollars in addition to payment of the debt.

Under the facts as stated by me the execution of the deed in payment of the mortgage debt divested the title passing by the mortgage.—Code 1923, Section 1926. The mortgage ceased to exist and the deed became the sole muniment of title in The Prudential Insurance Company of America. When this deed was offered for record the filing tax was measured by the value of the property conveyed and there was no mortgage to be deducted.

If the value of the property conveyed was twenty-two hundred dollars, the filing tax was two and 50-100 dollars.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 8, 1933.

Hon. I. N. Hobson,
Clerk of the Circuit Court,
Tuscaloosa, Alabama.

Costs in penitentiary cases not payable by the State until convict is delivered to the penitentiary officials.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 15, 1932, in which you request my opinion as follows:

"On June 15, 1932, one Robert Kizziah, Case No. 1264, was convicted in the Circuit Court of this County of the offense of manufacturing prohibited liquor and sentenced to a term in the penitentiary of the State as punishment for this offense. The defendant was then paroled by the Court without paying fine and costs, or either of them. Later the Court ordered the defendant arrested and delivered to the State to serve this sentence. The Sheriff arrested this man, confined him in jail, and I sent the Board of Administration of Alabama a transcript for him. The Board then sent a transfer man here for Kizziah. Upon his arrival he found this defendant to be ill, his temperature being 104 degrees. The Sheriff offered him to the transfer man and on account of the physical condition of the defendant the transfer man decided not to take Kizziah at that time. Later this defendant died.

"Kindly answer for me the following questions:

"Should the State pay the court costs in this case?

"Should the State pay a fee of \$50.00 to the Sheriff of this County for capturing the still which was operated by this defendant?"

It is my opinion that none of these costs are payable by the State until the defendant is actually delivered to the State authorities. I call your attention to Section 3670, Code of Alabama, 1923, and particularly to the last clause which reads as follows: * * * * No costs shall be paid, until the convict has been delivered to the penitentiary officials, * * *

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

February 8, 1933.

Hon. S. W. Hawkins, Chairman,
Board of Registrars,
Birmingham, Jefferson County, Alabama.

Poll tax exemption of veterans who have served in the Army or Navy of the United States.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 6, 1933, in which you request my opinion as follows:

"This office has frequent applications for exemption from poll tax on 'Discharge from Draft'. We are enclosing one which certifies that Murray Perry, serial number 4,777.218, 'is discharged from the military service of the United States etc.,' and in view of the fact that Section 194½ reads ***** is hereby discharged from the military service of the UNITED STATES etc.,' we would like for you to advise us your opinion regarding same."

The discharge paper which you enclosed shows that Murray Perry was inducted into the United State Army at Nashville, Tenn., on the 30th day of August, 1918, and on account of having a defective knee was discharged at Camp Greene, N. C., on the 20th day of October, 1918, which shows his service in the United States Army to be not quite two months, and under Section 194½ of the Constitutional Amendment of 1919, (General Acts 1919, p. 724) he would not be exempt as this section says, among other things, that the service must be for a period not less than four months between January 1, 1917 and November 11, 1918, but in 1923 Section 194½ of the Constitution as amended, was again amended by an Act approved September 27, 1923 (General Acts 1923, p. 272). Here Section 194½ was amended and that provision of the amendment of 1919 was left out which says that he must serve four months, as stated above, and there seems to be no limitation placed upon the service. Therefore, it seems to me that all that is necessary is that he was inducted into the service for any length of time. I am, therefore, of the opinion that under the certificate that you enclosed the party mentioned therein would be entitled, under Section 194½ of the Constitution as amended in 1923, to his poll tax exemption.

Yours very truly
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1933.

Hon S. H. Blan,
State Treasurer,
CAPITOL

Speaker of the House of Representatives and Lieutenant Governor
entitled to compensation for per diem and expenses fixed by the Legis-
lature notwithstanding the order of injunction issued February 7, 1933.

Opinion by the Attorney General.

My dear Sir:

I have your letter of February 9, 1933, in which you inquire whether or not you should pay to the Speaker of the House of Representatives and to the Lieutenant Governor their per diem and expenses since the issuance of the injunction by Chief Justice Anderson prohibiting your paying members of the Legislature any sums or amount in excess of \$4.00 per day and mileage for attending the Extraordinary Session.

In Section 1 of the order granting the injunction it is provided that you shall pay no member of the Legislature any sum of money in excess of \$4.00 per day and mileage during his attendance at the Extraordinary Session, **other than the Speaker of the House** as provided by Section 49 of the Constitution of 1901.

It is apparent that the restraining order intended to and expressly did exempt the Speaker of the House from its operation.

It is reasonable to suppose that the Chief Justice excluded from the operation of the restraining order the Speaker of the House in view of Section 67 of the Constitution which provides that the Legislature shall prescribe by law the number, duties and compensation of the officers of each House.

Of course the Lieutenant Governor is the presiding officer of the Senate but not a member of the same. Hence not being a member of the Legislature his compensation is not affected by the restraining order. And the Senate has the power to provide the amount of his compensation, he being an officer of that body.

In my opinion you should pay the per diem and expenses of the Speaker of the House of Representatives and the Lieutenant Governor of the State as fixed by the Legislature.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller.
CAPITOL.

Bills and notes—Computation of interest on note paid before maturity at stipulated interest at 8 per cent per annum from date until paid.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 14, 1933, in which you state that the County Board of Education of Houston County executed a note or bond on December 18, 1931, for \$17,000.00 due February 15, 1933. Said note was paid before maturity on January 9, 1932. The only stipulation relative to interest contained in said note or bond is as follows: "This bond or note is to bear interest at the rate of 8 per cent per annum from date until paid."

In view of the above you request my opinion as to whether or not there was any authority of law to pay interest beyond the time of the payment of the note.

I am of the opinion that your question should be answered in the negative.

If it is provided by the contract, or if an implication arises from its terms, that interest shall be computed up to a given time or no interest shall be computed after such time, the recovery of interest will be governed accordingly.—33 *Corpus Juris* 238.

Applying the above rule to the instant case it appears that said note does not bear interest after same is paid although payment may be made before maturity. Payment before maturity was a sufficient consideration for the release of interest.—*McCoy vs. Wynn*, 215 Ala. 172, 110 So. 129.

The County Superintendent of Education is liable on his official bond for the amount of interest paid beyond the time when the note was actually paid.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

February 10, 1933.

Hon. S. R. Butler,
State Tax Commission,
CAPITOL.

Taxable tobacco within the meaning of the Tobacco Tax Act of 1932 includes all tobacco which may reasonably be used and adapted for smoking purposes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 3, 1933, in which you quote letter from the Owen Tobacco Works, Inc., Eagleville, Tennessee, protesting the inclusion of twist tobacco as a taxable tobacco under the Tobacco Tax Act approved November 1, 1932. I also note your statement contained in the last paragraph in which you state that your construction of Section 1, subsection 9, is that this Act levies a tax on all ready rolled cigarettes, cigars, cheroots, little cigars, and all forms of cigarette and pipe smoking tobacco including all twist tobacco that is not so heavily treated with licorice as to render it impossible to smoke.

The question in the last analysis is one of fact and one which should more properly be answered by the administrative department than by the judicial. Roughly, I would think that if this so-called twist, the nature and kind and common use of which neither your letter nor that of the Owen Tobacco Works describes in detail, is such that it can readily and customarily, or often is used for smoking purposes, then it is a taxable tobacco within the meaning of the Act. I do not think that non-taxable tobaccos are merely those impossible for use for smoking purposes. The more reasonable rule would be that they are such tobaccos which are reasonably and without difficulty adaptable for smoking purposes.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

February 10, 1933.

Hon. A. J. Morrow,
Tax Collector, Coffee County,
Elba, Alabama.

Where personal property is in the hands of a taxpayer on October 1st and upon which the State has a lien, is about to be removed from the County, and the collection of the taxes endangered, it is the duty of the Tax Collector to immediately collect same in the manner provided by

Section 3077 of the Code of 1923.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 1, 1933, in which you state:

"I would like to have your opinion on the following question:

"We have three National Banks in Coffee County which are now in the hands of Receivers. These Receivers are taking in under their mortgages such property as mules, hogs, cows, and wagons, in fact all personal property upon which they hold a mortgage.

"Now the question is: If this property is taken away from the taxpayer after October 1, 1932, should I, as Tax Collector, collect the taxes for the year 1933? The property is being taken in and sold at public auction to parties outside the county and in some instances it is carried out of the State.

"My understanding of the revenue law is that all personal property is subject to taxes for the current year if it is in the County on October 1st of such tax year. I have made demands on the officials of these Banks for the taxes on this class of property for 1932 which is being paid. I also made demand for the 1933 taxes on the property but they have declined to pay the same. Now since this property is being carried out of the County and State, I would like to have your opinion at once as to whether or not it is my duty to collect tax on the property for 1933.

"Please let me have your opinion at once as there is quite a lot of this property now being disposed of."

The facts in your letter are not quite clear and the answer is based on the exemptions set out herein. If the property was in the hands of the taxpayer on October 1, 1932, it is subject to the State's lien for taxes and if about to be disposed of, or the collection of the taxes against it is being endangered, it is the duty of the Tax Collector to collect the taxes under the provisions of Section 3077 of the Code of 1923.

The same rule would apply to taxes on property which was in the hands of individuals on October 1, 1933, if the property is thereafter removed in such a way as to endanger the collection of the taxes assessed against it. If prior to October 1, 1933, the property had been taken over by the Bank or its Receiver and was in the actual possession of the Bank as of October 1, 1933, then it would not be subject to taxation. Section 5219 of the Revised Statutes of the United States affords no authority for the State to collect taxes assessed against the personal property of national banks.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 10, 1933.

Hon. R. P. Barnes,
Clerk of the Circuit Court,
Prattville, Autauga County, Alabama.

Solicitor's fee in cases for carrying concealed pistol is \$30.00.

Opinion by Assistant Attorney General Haynes.

Dear Sir.

I have your letter of January 20, 1933, in which you request my opinion as to what is the solicitor's fee in cases where defendant is charged with carrying concealed weapons.

I call your attention to Section 3738, Code of Alabama, 1923, at the top of page 196 of said Code. You will note that the solicitor's fee for a conviction under Section 3485, Code of Alabama, 1923, is \$30.00, and you will note that Section 3485 of the Code is the section prohibiting the carrying of concealed pistols.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 10, 1933.

State Tax Commission,
CAPITOL.

Attention: Hon. John C. Curry, Chief Clerk, Ad Valorem Tax Department.

Mortgagee of personal property may pay the tax thereon with interest and penalties at any time before the sale thereof for taxes, and thereby release such property from the lien for other taxes due by the taxpayer.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of January 28, 1933, together with letter attached of W. J. O. Gunter to you of January 16th, is acknowledged. You asked my opinion upon the inquire made of you by Mr. Gunter, viz:

"After the Tax Collector makes a levy on a taxpayer's personal property to pay the taxes on his real and personal property, has a mort-

gagee holding a mortgage on the personal property so levied upon the right to come in and pay the taxes on the personal property alone and release it from the taxes on the real estate of such taxpayer at any time before the sale?"

In reply will say that in my opinion he has; but he should pay all costs chargeable up to the date he makes payment as well as the taxes on such personal property with interest thereon since default. Section 411 of Act No. 328, approved September 16, 1919, so far as is necessary for answer to the inquiry is as follows:

"The holder of any lien on * * * personal property may pay the tax thereon and penalties, and upon such payment shall be subrogated to the lien of the State, County or municipality and the sum so paid shall bear interest from the date of payment and may be collected in the same manner as the original claims of the lien holder."

This Section of said Act clearly provides that the mortgagee may pay the tax on personal property upon which he has a mortgage, with interest thereon and penalties. In my opinion this may be done at any time before the sale of the personal property is made.

As Act No. 32, approved September 17, 1932, now stands, it does not apply to taxes assessed in the tax year 1931-1932 and due October, 1st 1932.

Yours truly
THOMAS E. KNIGHT, JR.
Attorney General

February 14, 1933.

Hon. J. W. Hamilton,
Tax Collector, Jefferson County.
Birmingham, Alabama.

Non-withdrawable or permanent shares of building and loan associations subject to assessment in the same manner as stock or other domestic corporations under provisions of subsection 11, Section 31 of Act approved April 9, 1931, Acts 1931, page 218.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 3, 1933, in which you state:

"On the 15th of September, 1932, Lacey Edmondson, Deputy Tax Assessor of this County, made an assessment for the tax year of 1932

against the Birmingham Building and Loan Association, Inc. for their share of non-withdrawal stock. A controversy has been raised between said corporation, and Lacey Edmondson, regarding the legality of the assessment against non-withdrawal shares of stock, the company refusing to pay same.

"Before proceeding to enforce the collection of this, and other identical accounts, I would appreciate your opinion as to whether or not non-withdrawal stock in building and loan corporations is assessable for the tax year of 1932. The corporations are laboring under the impression that bill No. 111—H. 12, Stokes, passed at the extraordinary session exempts them from ad valorem taxes."

In reply I beg to advise that subsection 11 of Section 31 of the co-called Building and Loan Act of 1931, Acts 1931, page 218, at page 232, provides:

"The non-withdrawable or permanent shares of building and loan associations shall be subject to taxation on the same basis and in the same manner as stock of other domestic corporations."

Under this provision the non-withdrawable or permanent shares would be subject to assessment for the year beginning October 1, 1931, and ending September 30, 1932. If the property had not previously been assessed, it is, I presume, assessable as an escape.

This office has heretofore ruled that the provision in the Stokes Bill, House Bill 12, approved October 22, 1932, to which you refer making exemptions from the payment of ad valorem taxes due for current tax year 1931-1932, to be in violation of Section 100 of the Constitution.

Yours very truly,
THOMAS E. KNIGHT, JR.
Attorney General.

February 15, 1933.

Hon. A. F. Harman,
Department of Education
CAPITOL.

Bonds—County Treasurer of School Funds required to execute new bond or additional bond under Act No. 290, H. B. 689, approved November 9, 1932, if old bond is insufficient.

Schools—County Board of Education not authorized to use school funds to pay for audit of accounts of School Treasurer and County Superintendent of Education.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 7th in which you request my opinion as follows:

1. Will a County Treasurer of School Funds, who has executed a bond which does not expire until July 1, 1933, be required to execute a new bond under Act No. 290, H. B. 689, approved November 9, 1932?

2. Is there any authority for the County Board of Education to pay for audits of accounts of the County Treasurer of School Funds and the County Superintendent of Education out of school funds?

The answer to your first inquiry is governed by Section 19 of Act No. 290, H. B. 689, approved November 9, 1932, which provides as follows:

"Section 19. That where the official bond of any County officer of any County, duly qualified and commissioned prior to the passage and approval of this Act, has been fixed and approved, and such bond is in the judgement of the Commissioners Court, Board of Revenue or like County governing body in such an amount and secured by such surety or sureties as fully to protect the public interest and safeguard public moneys, such bond shall be and remain and continue in force and effect, and such officer shall not be required to make any new bond except as in the event such bond should become insufficient and an additional bond be required as provided in this Act."

If the old bond is a sufficient compliance with Section 14 of Act No. 290, *supra*, which provides for the bond of the County Treasurer of School Funds, no new or additional bond need be made. However, if the old bond is in an amount less than that required by Section 14, a new or additional bond should be made, which should at least bring the amount up to that specified in said Section 14, viz: the largest amount of revenue had in hand by the County Treasurer of School Funds at any time during the preceding year.

In answer to your second inquiry, I wish to state that I know of no authority whereby the County Board of Education may use school funds to pay for an audit of the accounts of the County Treasurer of School Funds or County Superintendent of Education.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

Copy to:
Hon. Sam H. Oliver, Chairman,
Chambers County Board of Education,
LaFayette, Alabama.

February 15, 1933.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Act No. 83, approved October 11, 1932, does away with the use for a book on which to make assessments as was formerly done and there is no authority for the County to purchase such book as the Tax Assessor makes the book of assessments as provided in said Act.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of January 19th was duly received. You write as follows:

Under an Act of the 1932 Legislature approved October 11th the Tax Assessors of the various counties are not required to prepare and make up the book of assessments as required by law up to the time of the passage of this Act.

Please advise us whether or not the County can legally pay for the book on which to make these assessments if the Tax Assessor wishes to make them up.

In reply will say that Act No. 83, approved October 11, 1932, Section 1, reads as follows:

That the Tax Assessors of all the Counties in the State of Alabama, where local laws do not provide to the contrary, shall not be required to prepare and make up the book of assessments as now and heretofore designated by law, but in lieu thereof shall be required to arrange in alphabetical order, according to beats or precincts, original assessment lists and cause the same to be permanently bound, and such lists when bound, shall constitute the book of assessments to all intents and purposes. Such assessment lists when bound shall be preserved permanently as a matter of record, and in making the Tax Collector's Abstract, such abstract shall be made direct from the assessment lists.

It will be seen from the foregoing that the method required by said Act for making up the book of assessments is different from what it formerly was. The Tax Assessor is not permitted to make the book as such books were formerly made and there could be no use for such a book, if purchased. In my opinion the County would not be authorized to pay for such book, on which to record the assessments as was formerly done.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 15, 1933.

Hon. N. P. Tompkins,
Probate Judge of Colbert County,
Tuscumbia, Alabama.

County Treasurer.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of December 21st, 1932 in which you request an opinion of this office on the following matters:

1. Is it permissible under the Bains Act, approved Nov. 4, 1932 for the County Treasurer to make a bond with individuals as sureties, or is it necessary, under the law that the County Treasurer make bond with a Surety Company.

2. What are the requirements imposed upon the Court of County Commissioners in fixing the amount of the bond. In this connection we desire to know whether the amount is controlled by Section 11 of the new act approved Nov. 9, 1932, wherein it is based upon the revenue of the previous year, or whether it is controlled by the old law on County Treasurers requiring a bond in double the revenue of the previous year, or whether a County Treasurer makes the same, bond as is required of a bank acting as County Depository wherein the law provides that it may be in the sum of \$50,000 or such other amount as the Court may determine, having due regard to the safety of the funds.

3. In the event you conclude that the bond of the Treasurer is governed by the law fixing the bond at \$50,000 or such other amount as the court may determine, as in case of a bank acting as Depository, does this section mean that \$50,000 is the minimum or can the bond be in a sum less than \$50,000 if the court determines the lesser amount would be safe.

4. In the event no individual is able and willing to make the required bond and the county is left without a Treasurer after January first, what provision of law is there for receiving and disbursing county funds, that is, would the Court of County Commissioners or any other officer of the County, have authority to do so and is there any provision in the law for such an emergency?

Inasmuch as the last Federal Census shows Colbert County to have less than 56,000 population, a county treasurer is not elected by the people as provided for in Section 300, Code of Alabama, 1923. But said County comes under the operation of Sections 312-324, Code of Alabama, 1923. The population basis of Section 312 was increased to 56,000 by the recent extraordinary session of the Legislature, S. B. 244. Said Section 312 as amended

abolishes the office of County Treasurer in all counties having a population of not more than 56,000 inhabitants. Section 314 provides for a county depository in lieu of county treasurers in all such counties.

However, Section 322 provides for the designation of an individual to serve as County Treasurer in case a depository is not available.

"If the board of revenue or court of county commissioners are unable to designate any depository for the county funds in their county by reason of their inability to secure from any bank within its limit terms for the handling of the county funds as provided in this article, satisfactory to such board of revenue or courts of county commissioners, then such boards may designate some individual who may act as treasurer of such county under such terms and conditions as may be fixed by said courts of county commissioners or boards of revenue."

It is such a "county treasurer" as mentioned in the above section that I presume you have reference to in your letter.

It is my opinion that Section 11 of said act does not apply to those individuals acting as county treasurers in lieu of a county depository as provided for in said Section 322, but only to the county treasurers of counties having over 56,000 inhabitants and who are elected under Section 300.

Section 11 is as follows:

"The bond of a County Treasurer elected under the general law of the State shall in no case be less than the amount of the revenue had on hand by the County Treasurer at any one time during the preceding year, such amount to be determined and estimated by the semi-monthly report of the County Treasurer of all revenues of the County that he had on hand at any one time during the previous fiscal year."

However, it is my opinion that Section 3 of the Act gives the Board of Revenue, Court of Commissioners or other like governing body the right to fix the amount of the bond of the individual acting as County Treasurer. I think that under the case of Jenkins vs. Watson, 219 Ala. 554, he is such an officer or employee as to come within the operation of said Section 3, which is as follows:

"The Commissioners Courts, Board of Revenue or other like governing bodies of the respective counties are hereby empowered to fix and approve the official bonds of all other county officers and employees in such an amount or amounts as may in their judgement be necessary for the safety and security of public funds or other funds and as the public interest may demand, subject to such limitations as are specifically provided herein and made applicable to each particular county official."

As heretofore stated it is my opinion that there is no specific provision in said act applicable to individuals acting as county treasurers (as distinguished from county treasurers in counties over 56,000) and it also being my opinion that such a county treasurer is contemplated in said section three, I therefore reach the conclusion that the amount of the bond is to be determined by the Court of County Commissioners or Board of Revenue.

I am also of the opinion that the bond can be made in either a surety company or by a personal bond. Section 21 is as follows:

"All official bonds of county officers and other bonds provided in this act may be made in a surety company or in surety companies qualified to do business in this State, or may be made with individuals and-or personal sureties and-or banks or other corporations qualified to do business in this state, and authorized under their charters to make security or official bonds or to become surety on such bonds."

My answer to your second question makes it unnecessary to consider your third question.

In answer to your fourth question, I know of no provision of law authorizing the Board of Revenue or Court of Commissioners to receive and disburse county funds.

Section 323 does not give them this right. It merely places upon the president of the Board of Revenue or Court of County Commissioners the duty to perform those acts which had theretofore been upon the elected county treasurers except the receipt and disbursement of county funds.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 15, 1933.

Hon. A. F. Harmon,
Department of Education,
CAPITOL.

Schools—Rural school houses, Erection, Repair and Equipment Fund —Act No. 370, H. B. 350, approved July 8, 1931 (Acts 1931, page 435) as amended by Act No. 306 H. B. 148, approved November 9, 1932.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 28, 1933 in which you request my opinion on the following inquiries relative to State Aid on indebtedness on

the erection, repair and equipment of rural school buildings in connection with Act No. 370, H. B. 350, approved July 9, 1931 (Acts 1931, page 435) as amended by Act No. 306, H. B. 148 approved November 9, 1932:

1. Over what period of time is interest on indebtedness to be allowed?

2. Does "during previous years" in the ninth line of the second paragraph of the Act mentioned above refer to years prior to the passage of the Act or years prior to the one in which the application is made.

3. Does the Act provide that the distribution of funds referred to in the last part of paragraph 2 may be made within the thirty days following the payment of the obligation by the county board of education?

Before specifically answering your inquiries, wish to state that Act No. 306, H. B. 148, approved November 9, 1932 is merely an act amending the 1931 act relative to State Aid for rural school houses and only changed the 1931 act in a few particulars.

In answer to your first and second inquiries, wish to quote from an opinion of the Attorney General rendered to you under date of September 30, 1931 relative to this matter which is as follows: "In answer to your third inquiry, I am of the opinion that 'the indebtedness incurred' as used in said Act includes the **principal owed plus the interest accrued** at the time said act went into effect, viz. July 8, 1931". The same definition of "indebtedness incurred" relative to the principal, is applicable to the 1932 act as well as the 1931 act. But the 1932 act provides for the payment of interest which in my opinion includes the payment of interest that may have accrued up to the time the application for state aid is made. This in no way would affect the principal owed which must have been incurred prior to July 8, 1931.

I base this ruling relative to interest on certain provisions of Section 2 of the 1932 act which authorizes the payment of interest due or to become due in the year in which the aid is granted.

I am of the opinion that your third inquiry should be answered in the affirmative. The last portion of Section 2 of the 1932 act provides as follows:

" Applications hereunder may be made and if otherwise allowable, distribution of said funds shall be made by the state board of education at any time **within thirty days of the date for payment of obligations of county boards of education for said purposes**; provided that such county boards of education file with the other proof required by this act a certificate that the granting of such distribution will not interfere with any new projects contemplated on which state aid could be secured." (Italics supplied)

Although the language herein used is ambiguous, I am of the opinion that it was the legislative intent to allow the State Board of Education thirty days after the date for payment of the obligation by the County Board of Education in which to make distribution of the funds in question. To hold that the thirty days provision means thirty days before the payment of the obligation by the County Board of Education would nullify the provision of the act in question which specifically provides **that funds raised by the county together with the State Aid must be actually and presently used upon the retirement of the indebtedness.**—Opinion of the Attorney General to Hon. A. F. Harmon, under date of December 30, 1931.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General

February 17, 1933.

Hon. J. F. Wilson, Clerk,
Circuit Court, Randolph County,
Wedowee, Alabama.

State is not liable for trial tax for such tax is not included in the schedule of fees for which the State becomes liable on conviction under Section 3667, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 9, 1932 in which you request my opinion as follows:

"I shall thank you to advise me at once whether or not, under the Local Act creating the Inferior Court of Randolph County, the county is entitled to collect from the State the Three (\$3.00) Dollar trial tax taxed in each case docketed in said court.

"The Inferior Court of Randolph was created by Local Act of 1931 and you will find it beginning on page 86 of the Local Acts of 1931.

"What I mean to say is; whether the county is entitled to collect from the State the Three Dollar trial tax in cases sent to hard labor for the county and turned over to the State to work, criminal cases. The Solicitor's fee is paid by the State and I want to know if this trial tax should be paid by the State also."

The State is not liable and will not pay a trial tax as costs in a criminal case from the Inferior Court of Randolph County, for such item is not in-

cluded in the schedule of fees as set out under Section 3667, Code of Alabama, 1923, for which the State becomes liable whenever a defendant is convicted and sentenced to the penitentiary. This schedule of fees is made applicable in misdemeanor cases which are sentenced to hard labor for the county and the convicted party is turned over to the State by Section 3 of an Act approved February 18, 1927 (General Acts 1927, p. 52).

February 17, 1933

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Alabama.

The county is without authority to pay board of guard at jail.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 29, 1932. You request my opinion as follows:

"On the 3rd day of May, 1932, M. L. Wann, the Sheriff of Jackson County, was killed.

"The Coroner thereupon took charge as Sheriff but left Mrs. S. E. Wann, widow of the Sheriff, in charge of the Jail and feeding the Prisoners.

"The Coroner placed one Latham at the Jail to help look after the Prisoners etc., during the month of May, 1932, pending the appointment of a Sheriff.

"Mrs. S. E. Wann now files a claim against the County for \$15.00 for the board of said Latham during the month of May, 1932, while he was staying at the Jail at the instance of the Coroner.

"Will you please advise me if this is a legal charge against Jackson County, and greatly oblige?"

I find no authority of law for the payment of the board of a guard who was employed by the coroner to guard said jail while waiting for the appointment of a sheriff.

Yours truly
THOMAS E. KNIGHT, JR.,
Attorney General

February 17, 1933.

Hon. W. W. Brandon
Judge of Probate Tuscaloosa County,
Tuscaloosa, Alabama.

1. The redemption of real estate sold for the payment of taxes prior to September 15th, 1932, and bought in by the State, is controlled by Section 3110 of the Code of Alabama.

2. The redemption of real estate sold for the payment of taxes prior to September 15th, 1932, and bought in by an individual other than the State, is controlled by Section 3111 of the Code of Alabama.

3. The redemption of real estate sold for the payment of taxes on or subsequent to September 15th, 1932, and bought in by the State, is controlled by Act No. 19, approved September 15th, 1932.

4. The redemption of real estate sold for the payment of taxes on or subsequent to September 15th, 1932, and bought in by an individual other than the State, is controlled by Act No. 20, approved September 15th, 1932.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of January 12th to hand. You call my attention to Act No. 157, approved April 4th, 1931, and also to Acts No. 19 and No. 20, approved September 15th, 1932, and ask my opinion as follows:

"1. Is it correct that the interest charged in the matter of redemptions of property sold for taxes before April 4th, 1931: 15 per cent over the whole time?

"2. What interest should be charged on redemptions for land sold for taxes between April 4th, 1931, and September 15th, 1932, the date said Acts of the Extraordinary Session were approved? If the Acts of the Extraordinary Session changed the interest in regard to the redemptions of land already sold, state in what manner and at what time.

"3. Is there any difference in the interest charged in redemptions on property sold for taxes between April 4, 1931, and September 15th, 1932, where the State buys the property at a tax sale and when an individual buys the property in?

"4. Where an individual bought property at a tax sale held after September 15th, 1932, what interest should be charged in case the property is redeemed?"

In reply to question one, will say that Act No. 157, approved April 4th 1931, is unconstitutional in toto—Opinion of Attorney General to State Tax Commission, May 6, 1931. It has no influence on the question of what interest must be paid by a redemptioner of real property sold at a tax sale. Sections 3110 and 3111 of the Code of Alabama control on redemption of real estate sold for payment of taxes prior to April 4th, 1931. These sections require the payment of the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum. Taxes accruing subsequent to the sale bear interest at the rate of eight per cent per annum from date of delinquency, just as do all *ad valorem* taxes.

In answer to questions 2 and 3, will say that, in my opinion, lands sold for payment of taxes at any time before September 15th, 1932, on application for redemption, the redemptioner must make payment as provided by Sections 3110 and 3111 of the Code of Alabama, whether he is redeeming from the State or from an individual other than the State.

In my opinion, where lands were sold for the payment of taxes and bought in by an individual other than the State, prior to September 15th, 1932, the date of the approval of said Act No. 20, such individual acquired a vested right in the property, so purchased, such that it could not be redeemed otherwise than the law provided at the date of sale. Any subsequent statute to the contrary would be unconstitutional. Besides, there is no statute to the contrary. Said Act No. 20 so provides.

In my opinion, where lands were sold for taxes and bought in by the State prior to September 15th, 1932, the date of the approval of said Act No. 19, the State is protected from the Legislature reducing the liability of the redemptioner to the State on application to redeem from the State, by Section 100 of the Constitution. This section provides:

“No obligation or liability of any person, association, or corporation held or owned by this State, or by any county or other municipality thereof, shall ever be remitted, released or postponed, or in any way diminished by the Legislature,” etc.

Statutes are construed as having a prospective operation, unless the contrary is expressed or necessarily implied.—*Ward vs. State*, 224 Ala. 242. Where an Act is capable of two constructions, one of which is constitutional and the other is unconstitutional, the courts will adopt the one that is constitutional.

In my opinion said Act No. 20 may be construed as applying to future sales and by such a construction be held constitutional and valid.

In answer to question four, will say that where an individual bought in real property at a tax sale held after September 15th, 1932, the redemption of the property by the redemptioner is governed by Act No. 20, approved September 15th, 1932. The redemptioner is required to deposit with the pro-

bate judge of the county in which the land is situated "the amount of the money for which the lands were sold, with interest thereon at the rate of eight per cent per annum from date of sale, together with the amount of all taxes which have been paid by the purchaser, with interest on such payment at the rate of eight per cent per annum."

In answer to question five, will say that where the State bought property at a tax sale held after September 15th, 1932, the redemption of the property by a redemptioner is governed by Act No. 19, approved September 15th, 1932. The Act provides:

"The party desiring to make such redemption shall deposit with the probate judge of the county in which the land is situated the amount of the money for which such lands were sold, with interest thereon at the rate of eight per cent per annum from the date of sale, together with the amount of all taxes due on such land since the date of sale, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes." etc.

Yours truly
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1933.

Hon. H. H. Montgomery,
Superintendent of Banks,
Montgomery, Alabama.

Section 74 of the Constitution of the State of Alabama forbids the Legislature from authorizing "the investment of any trust funds by executors, administrators, guardians or other trustees in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made."

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 1, 1932, was duly received. You write as follows:

"Will you please advise if the Constitution of the State of Alabama forbids the Legislature to pass any law authorizing trust fund investments in bonds or stocks of private corporations?"

In reply will say that the only provision on the subject to be found in

the Constitution of the State of Alabama is Section 74. This section reads as follows:

"Sec. 74. No act of the legislature shall authorize the investment of any trust fund by executors, administrators, guardians, or other trustees in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

1. To procure a permit as provided by Section 42 of Act No. 163, approved July 22, 1927, a foreign corporation must qualify to do business in Alabama.

2. There is no requirement of law for a foreign corporation to qualify to do business in the State of Alabama nor to procure a permit as provided by Section 42 of Act No. 163 approved July 22, 1927 in order to carry out a contract it has made with the United States Government for the dredging of a portion of the canal connecting the waters of the State of Florida with the waters of the State of Alabama.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 9, 1932 was duly received. You enclose with letter copy of application of the Jahncke Service Inc., a foreign corporation, for permit as provided by Section 42, of Act No. 163, approved July 22, 1927, and copy of franchise tax return for said corporation, with letters from Harry T. Smith and Caffee, attorneys, explaining the nature of the business contemplated by said company in this state.

The letter to you of date October 26, 1932 from Harry T. Smith and Caffee states: "proposes to do no business in the State of Alabama except to carry out a contract it has with the United States Government for dredging a portion of the canal known as the Pensacola-Mobile Inter Coastal, Canal, connecting the waters of the State of Florida with the waters of the State of Alabama."

Under the facts stated, you desire my opinion:

1st. Can the Jahncke Service, Inc., a foreign corporation procure a permit as provided by Section 42 of Act No. 163, approved July 22, 1927 without first qualifying to do business in Alabama as provided by statute?

2nd. Is the Jahncke Service, Inc., under the facts stated, required under the laws of Alabama to qualify as a foreign corporation before doing business in the State of Alabama?

In reply to your first question, will say that, in my opinion, no foreign corporation can procure the permit provided by Section 42 of Act No. 163, approved July 22, 1927 until it has qualified to do business in the State of Alabama as required by statute. Said Section 42, so far as is pertinent to the question involved, reads as follows:

"Section 42. CORPORATION PERMIT. — Every foreign or non-resident corporation, and all corporations organized under or by authority of the laws of any state or government other than the State of Alabama, in addition to other license and privilege taxes required to be paid by law, and for the purpose of registration and to prevent the duplication of names and in order to secure for the public record, for taxation, and for other purposes, the names and addresses of the said corporation and individual officers thereof, shall be required to procure from the Secretary of State when it is admitted or authorized by law to do business, and annually thereafter, a permit, which permit shall be prepared by and countersigned by the State Auditor, and shall be delivered by the State Auditor to the Secretary of State in a well bound book with the stub and blanks therein showing the date thereof, the names of the corporations when issued, and the character of business engaged in by said corporation. The issuance of such permit to any such corporation shall be prima facie evidence of its having complied with all the laws required of it before engaging in business in this State"

This, in my opinion, clearly provides that a foreign corporation can procure such permit only after having qualified to do business in the state.

If the foreign corporation is engaged in a business in the state that does not require it to be qualified as a corporation in the state, then, in my opinion, there is no need of a permit as provided by said Section 42 as long as such corporation confines itself to such business; but when it engages in any business that requires such permit, it must qualify to do business in Alabama before procuring such permit.

In reply to your second question, will say that, in my opinion, the digging of the canal as stated, under a contract with the United States, requires no qualification by said corporation to do business in the state and

hence no permit as provided by said Section 42. The Supreme court of the United States in the case of Pambena Mining Company vs. Pennsylvania, 125 U. S. 190 has this to say:

"The only limitation upon this power of the state to exclude a foreign corporation from doing business within its limits, or having offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the federal government, or where its business is strictly commerce, interstate or foreign. The control of such commerce being in the federal government, is not to be restricted by state authority."

In the statement of facts in said letter of Harry T. Smith and Caffee, the corporation contemplates doing no other business in Alabama than the digging of said canal under contract with the United States. For doing this work no qualification under the laws of Alabama is necessary; but no permit as provided by said Section 42 can be procured without qualifying.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1933.

Dr. E. L. McIntosh,
County Health Officer,
Camden, Wilcox County, Ala.

County Health Officer - Fuel for heating office furnished by county.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 10, 1932 in which you request my opinion as follows:

"Please advise me as County Health Officer of Wilcox County if I am entitled to have necessary coal for the County Health Office furnished by the county."

It is my opinion you are entitled to fuel for heating your office as County Health Officer under Section 1058, Subsection 14, Code of Alabama, 1923. You will note that subsection 14, supra, says in part as follows:

" and the court of county commissioners or other like board may in its discretion appropriate from the revenue of the county such sums as are found necessary to furnish and equip the office of the coun-

ty health officer with all necessary supplies, and furnish all necessary clerical help, transportation and other expenses of the county health officer”

Yours very truly
THOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1933.

Hon. D. H. Turner,
Secretary to the Governor,
CAPITOL.

Capitol convicts - Expenses of transportation to and from capitol should be paid out of the appropriation made for repairing and refurnishing the capitol.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 29th in which you request my opinion as follows:

“A number of convicts, known as trustees, are brought to the capitol each day and carried back each night. They work at the capitol in keeping the building clean and in repairing.

“Please advise whether the expense of transportation of these convicts to and from the capitol each day can properly be paid from the appropriation for repair and refurnishing the capitol.”

It is my opinion that the expense of the transportation of convicts from Kilby prison to the capitol and returning them each day—that is, those used as janitors and keepers of the capitol grounds—should be paid out of the appropriation made for repairing and refurnishing the capitol. It is true that at the first glance it appears that this would be the State of Alabama taking money from one pocket and putting it over into another, and, under an unlimited appropriation, this would be true, but, under the present appropriation, where each department is required to operate within the limits of its appropriation, a different light is placed on it.

The Convict Department furnishes these convicts feed, housing and clothing and receives no compensation for the same; and is put to the extra expense of transporting them to and from the capitol each day. It is

my opinion, as stated above, that this transportation should be paid out of the fund indicated.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1933.

Hon. D. M. Weakley, Superintendent,
Alabama Boys Industrial School,
Birmingham, Alabama.

Employees of the Alabama Boys Industrial School not exempt from jury duty.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 20, 1933 in which you request my opinion as follows:

"Please advise me if the employees of the Alabama Boys Industrial School are exempt from Jury Duty under the Act approved February 21, 1927, Acts of 1927, page 76, amended Section 8605 of the 1923 Code of Alabama."

In answering your above inquiry, it is my opinion that employees of the Alabama Boys Industrial School do not come under the exemption from jury duty as provided for by an Act approved February 21, 1927 (General Acts 1927, p. 76) which Act amends Section 8605, Code of Alabama, 1923. You will note the Act says among other things: "... teachers of public or private schools while actively engaged in their profession; ..." Then again the term "employee" is broadened term and might include persons not engaged in teaching but performing menial duties.

Yours truly,
TSOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1933.

Hon. Joe McConnell,
Sheriff, Fayette County,
Fayette, Alabama.

Commissioners Courts, Boards of Revenue, are purely creatures of statute, and are without authority to perform any service or do any act unless authorized by law to do so.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 13, 1932 in which you state:

"Last year I went to the State of Arkansas as Sheriff of Fayette County, Alabama, to convey one Jim Fowler back to this county who was charged under a writ of participation in the Berry Bank robbery in Fayette County. I brought him back for trial as he voluntarily agreed to be brought back and placed in jail for the trial without requisition. The defendant has since been discharged. From what source should I receive my fees as Sheriff for actual expenses for trip and per diem?

"At another time I went to Elmore County with a warrant to execute upon a man by the name of Silas charged with robbing the Bank of Berry in this County, but he was then in custody charged with a felony in another County and I could only have him held under my warrant based upon an indictment until he was released from under the other charge. What way should I pursue to get actual necessary expenses of this trip?

"The County Commissioners of this County are willing to pay my expenses in either one or both of said cases, if I can get your opinion stating that it would be legal for them to do so."

In reply will state that it is my opinion the Commissioners Court is without authority to pay these cost bills. Commissioners Courts and Boards of Revenue are purely creatures of statute and are without power or authority to do any act or perform any service unless authorized by statute or by the construction of a statute. I find no authority for such payment. - 117 Ala. 203; 70 Ala. 145

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1933.

Hon. R. T. Simpson, Jr.,
Solicitor of Eleventh Judicial Circuit,
Florence, Lauderdale County, Alabama.

Special reporter may be appointed by the Presiding Judge of any circuit.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 20th, 1933, jointly signed by Hon. L. R. Timberlake, Solicitor of Law and Equity Court of Lauderdale County, in which you request my opinion as follows:

"It at times becomes very necessary to have a stenographer before the grand jury for the purpose of transcribing the testimony of witnesses. There are available for service before the grand jury for Lauderdale County two court reporters, namely, the reporter for the circuit court and the reporter for the law and equity court (the law and equity court being a court of limited jurisdiction created by local enactment).

"In view of the fact that the grand jury is usually in session when the court reporter for the circuit court is engaged in reporting civil trials the reporter of the law and equity court would be usually more available. Query: Would the proceedings of the grand jury be affected by the presence of the reporter of the law and equity court for the purpose of transcribing the evidence of the witnesses before that body?"

It is my opinion the Circuit Judge may appoint a special reporter for any branch of his circuit if he sees fit, under Section 5737, Code of Alabama, 1923, that is if the regular reporter is sick or unable to attend any term of court for any reason. In that event a special reporter may be appointed by the presiding judge by making the proper order and such reporter taking the oath as prescribed by Section 6740, Code of Alabama, 1923. However, I might state if the reporter of your Law and Equity Court is appointed and receives a regular salary or compensation, this makes him an officer of the Law and Equity Court of Lauderdale County under Section 6733, Code of Alabama, 1923, then he could not hold two such offices under Section 280 of the Constitution of Alabama of 1901.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1933.

Hon. E. L. Hurst,
Judge of Probate.
Gadsden, Alabama.

The Sheriff is entitled to the fee for serving process from a justice court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 31, 1933 in which you request my opinion as follows:

When a summons and complaint issued by a justice of the peace in a civil suit, where the amount is less than twenty dollars, and the said summons and complaint is executed by a sheriff or his deputy, shall the sheriff or his deputy receive fees allowed to sheriffs or fees allowed to constables?

Whenever any paper is issued and turned into the hands of a sheriff for service, whether it is served by a deputy or by the sheriff himself, the sheriff is entitled to the fees, whether it be a summons and complaint issued from the Circuit Court or from a justice of the peace. The question of whether or not the fee for this service should be the fee allowed sheriffs or constables when serving papers from a justice court depends wholly upon whether or not you have a local law giving constables in your county the same fees which sheriffs receive for like service. If you do not have such local law then the sheriff would be entitled, when serving papers from a justice of the peace court, to only such fees as are allowed constables.

The question of whether or not the deputy is entitled to this fee is a matter between the sheriff and his deputy, as the deputy works only for the sheriff and has no power to do anything in his own name, but must at all times act in the name of the sheriff.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 21, 1933.

Hon. Joseph B. Crow,
Tax Collector,
Mobile, Alabama.

Taxation—Acceptance of jury certificates in payment of county taxes.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 7, 1933, in which you request my opinion as to the construction of the 1919 Acts, pages 39 and 275 authorizing the acceptance of the jury certificates in payment of county taxes.

In answer to your inquiry, I am of the opinion that these certificates may be accepted in payment of taxes to the county for general county purposes from the party to whom a certificate was issued, but not from a transferee thereof.

Act No. 35, S. B. 15, approved February 11, 1919 (General Acts 1919, page 39) was brought forward as Section 3760 of the Code of 1923.

"County taxes" referred to in said Act and Code section means county taxes due for general county purposes and does not include any **special** taxation of any kind. Such certificate cannot be accepted in payment of any special school tax, or road or bridge taxes; nor can such certificate be accepted in payment of any state taxes of any character.—**Opinions Attorney General**, 1920-22, page 47. The county certificates issued for jurors under the above cited authority have been held to be non-negotiable.—**Allen et al. v. McCreary et al.** 101 Ala. 514, 14 So. 320.

Therefore, it is my opinion that said certificates may be accepted in payment of general county taxes, as above defined, only from the party to whom they were originally issued but not from the transferees thereof.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 21, 1933.

Hon. Ira B. Thompson,
County Solicitor,
Luverne, Crenshaw County, Ala.

One and the same person may act as County Solicitor and also act as County Attorney if he does not charge or receive compensation for his services as such County Attorney.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 9, 1932 in which you request my opinion as follows:

I am County Solicitor for Crenshaw County. I offered my services to the Commissioners Court as County Attorney and agreed to serve in said capacity without pay. I desire to know whether or not under the law, I am permitted to do this.

It is my opinion if you act in the above capacity without pay you may do so even though you are at one and the same time County Solicitor. It is true that Section 280, Constitution of Alabama, 1901, prohibits the holding of two offices at profit at one and the same time, yet it is my opinion where there is no charge made by you for your services as County Attorney you would not come under the general provisions of Section 280 supra.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 21, 1933.

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Ala.

Cost in felony cases are not payable by the State until the convict is delivered to the penitentiary officials.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 16, 1932 in which you request my opinion as follows:

"Re: Robert Kizziah, Charge, Distilling. The above subject was caught and convicted in the Circuit Court of this County. He was convicted November 26, 1932. The transfer man came for him on December 2, 1932, and he was sick with the flu, temperature of 103 degrees. We offered him to the transfer man, but he said he was too sick to remove. This man, Robert Kizziah, was transferred to the Druid City Hospital where he later developed pneumonia and died. Is the State liable for the cost and seizure fee in this case?"

I know of no provision of law that makes the State liable for this cost, but on the contrary I find that Section 3670, Code of Alabama, 1932, provides:

"No cost shall be paid, until the convict has been delivered to the penitentiary officials, and where a convict is sentenced in more than one case, the costs in the succeeding cases shall be paid when he is delivered to such officials."

Then as to the payment of reward which you refer to, I call your attention to Section 4788, Code of Alabama, 1923, which reads as follows:

"In all cases provided by statute where a sum of money is allowed in the nature of a fee or reward and is made payable to any person who furnished the evidence that brought about the conviction of the person charged and convicted of the offense of unlawfully distilling or manufacturing or making prohibited liquors and beverages, said sum shall be payable out of the convict fund on presentation to the state auditor of a certificate from the president of the state board of administration, to the effect that the defendant in whose case said sum is payable, has actually begun to work out the sentence imposed upon him."

This party having died before he could be delivered to the State, I know of no way the State could pay this cost.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Attorneys—Employment of—by Department of Agriculture & Industries under Section 31 of the Agricultural Code 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 13, 1933 in which you state that the Department of Agriculture and Industries has presented for payment the following vouchers:

W. R. Rountree, for opinions————\$100.00

Pettus and Fuller, Attorneys, Selma, for services in connection with opinion and advice relative to Agricultural appropriations and Agricultural fund..... \$224.60.

In view of the fact that I have approved these accounts, and in view of the fact that the Attorney General rendered an opinion on May 5, 1928—Opinions Attorney General 1926-1928, p. 516—holding that Section 31 of the Agricultural Code was unconstitutional, you request my opinion as to whether or not you may pay the above vouchers.

I am of the opinion that your inquiry should be answered in the affirmative. While fully adhering to the principles laid down in the opinion of the Attorney General rendered May 5, 1928, *supra*, I am, nevertheless, of the opinion that Section 31 of the Agricultural Code may be given a constitutional construction and field of operation. When a statute is capable of a constitutional construction and an unconstitutional one, the constitutional construction will be adopted if possible.

Section 31 of the Agricultural Code provides as follows:

"31. ATTORNEY GENERAL, LEGAL ADVISOR: COMMISSIONER MAY EMPLOY ATTORNEYS.—The Attorney General shall be the legal advisor of the Department of Agriculture and Industries in matters relating to the powers and duties of the Commissioner and State Board of Agriculture. The Commissioner, with the approval of the Board and the Attorney General, may employ an attorney in any proceeding relating to the laws, powers, and duties of the Department of Agriculture and Industries, and compensate such attorney out of the appropriation to the Agriculture Department Fund."

The above quoted section does not take away from the Attorney General any of his inherent and constitutional rights, but merely authorizes the Department of Agriculture to employ an attorney with the approval of the Attorney General. However, the attorney so employed will be subject to the supervision and direction of the Attorney General in accordance with his inherent and constitutional rights.

The opinion of the Attorney General written May 5, 1928, *supra*, is hereby modified to comply with this opinion.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 28, 1933.

Hon. J. R. Gamble,
Tax Commission,
CAPITOL.

H. B. 112, Gov. No. 58, Acts 1932 has no application to the licenses required of motor vehicles.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you ask the following questions of this office:

1. Would a vehicle designed primarily for passenger transportation, but equipped with a frame, rack, or body having a load capacity of not exceeding 1,000 pounds be required to take out an H-1 truck tag or a private passenger car tag?

2. As we understand the definition of "Semi-trailer truck" it is a motor vehicle or vehicles composed of a truck tractor and a semi-trailer and within the meaning of this law is considered one unit and, according to our opinion, only one license is required. Are we correct or should a truck tractor license and a semi-trailer license be required for a semi-trailer truck?

3. When a semi-trailer is attached to the rear of a motor truck as defined in Section 2, House Bill 112, is a license required for the motor truck and a separate license required for the semi-trailer?

4. Does this Act repeal Section 1, page 332, Acts, 1927, which provides as follows:

"Trailer.—Every vehicle without motive power designed for carrying property, only, wholly, or partially on its own structure and being drawn by a motor vehicle, shall pay a license tax of fifty per cent of the cost of the license tax of the motor vehicle by which it is drawn. Trailer or trailers for hauling passengers are prohibited by law."

5. Does a trailer or semi-trailer, of not exceeding 1,000 pounds capacity, attached to a motor truck require a trailer license tag?

6. Does a trailer or semi-trailer, of not exceeding 1,000 pounds capacity, attached to the rear of a private passenger car require a trailer license tag?

Your first inquiry is probably based on the first part of Section Two of the 1932 Act mentioned in your letter which is as follows:

"Section 2. When used in this Act 'Motor Truck' means any motor-propelled vehicle designed for carrying freight or merchandise and not operated or driven on fixed rails or tracks; but it shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks or bodies having a load capacity not exceeding 1,000 pounds. . . ."

If Act No. 58, H. B. 112 of the 1932 Legislature operated as a repeal of the Revenue provisions, it would seem that such a vehicle as you mention would not be required to carry a truck tag, but it is my opinion that said act being a police or regulatory measure has no application to the method or manner of computing the type of tag which a particular vehicle must carry. Said act merely deals with the size, width, length and weight of vehicles. Section 2 of the Act is devoted entirely to definitions and expressly

shows that the definitions therein set out are for the purposes of that act only. I am, therefore, of the opinion that such a vehicle as mentioned by you should carry the same tag that it was required to carry prior to the passage of the act above referred to. This office has heretofore ruled that such a vehicle as you mentioned should carry a truck tag.

Biennial Report Attorney General, 1920-22, p. 339;
Biennial Report Attorney General, 1926-28, p. 339;
Biennial Report Attorney General, 1926-28, p. 697;
Opinion to Hon. J. Massey Edgar, Chatom, Alabama,
February 13, 1932.

In view of the opinion above expressed that the 1932 act, supra, has no application to the revenue laws relating to motor vehicles, I am of the opinion that a truck with a semi-trailer attached thereto should carry a truck license and a semi-trailer license.

It is true that Section 2 of the 1932 act, supra, defines what is known as a "semi-trailer truck" and provides that it shall be considered as one entire unit.

"Section 2 'Semi-trailer truck' means any motor propelled vehicle, not operated or driven on fixed rails or tracks, designed to draw and to support the front end of a semi-trailer. The tractor, or motor propelled vehicle, together with the semi-trailer shall be considered one unit and the words 'Semi-trailer truck' as used in this act shall mean and embrace such entire unit."

But the definition above set out in my opinion was only for the purposes of that act and has no bearing upon the license required. I am, therefore of the opinion that there should be a license required for the motor vehicle based on its manufacturer's rated capacity and a semi-trailer license of one half the amount paid for the motor vehicle license.

Your third inquiry should be answered in the affirmative for the reasons heretofore set out.

In reply to your fourth question, I have heretofore in this opinion expressed my opinion to the effect that the 1932 Act does not repeal Section 1, page 332, Acts 1927.

For the reasons heretofore expressed I am of the opinion that your fifth and sixth questions should be answered in the affirmative.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 28, 1933.

Mrs. Gertrude P. Calloway,
Treasurer, Chilton County,
Clanton, Alabama.

1. Where warrant is drawn by order of the Commissioners Court of Chilton County, directed to the treasurer of Chilton County, signed by the Judge of Probate of Chilton County, who, as such Judge of Probate, is president of the Court of County Commissioners, and there is sufficient funds of the class for the payment of such warrants, in the hands of the treasurer, it is her duty to pay such warrant.

2. In such a case as above stated, there is no duty on such treasurer to make any investigation of such claim, other than the facts shown on the face of the warrant, before paying the same, if the face of the warrant shows the nature of the claim, so as to show what class of funds it must be paid out of.

3. No responsibility rests on the treasurer of Chilton County to determine the validity or legality of the claim, when the warrant is regular on its face and shows on its face that it belongs to a class payable out of the county funds.

Opinion by Assistant Attorney General Evans.

Dear Madam:

I have your letter of February 2, 1933. You make the following statement as fact:

"For a little more than four years, I have served as Treasurer of Chilton County, having been elected in the General Election, under Act of legislature, approved August 21st, 1933, Local Acts 1923, page 78.

"During the period of time mentioned, there has been presented to me many warrants, drawn by orders of Commissioners' Court of Chilton County, Alabama, and signed by the Probate Judge of this County, directed to me, ordering the payment of various sums out of the different funds in my possession as Treasurer. These warrants are in the usual form and carry on their face that they are for certain items (in short and concisely stated, of course) but the purposes for which they are drawn are subject matters that the Commissioners' Court have authority to pay. Many such warrants have been paid by me in the past, others are now being presented for payment and, of course, further warrants of the same kind will be presented to me for payment in the future."

You request my opinion as follows:

"(a) What are my duties as to the payment of such warrants issued by the Commissioners' Court and presented to me, assuming, of course, that sufficient funds are in hand;

"(b) Is it my duty as such Treasurer to make any investigation of any claim before paying the same, other or beyond the facts shown on the face of the warrant;

"(c) What responsibility rests on me to determine the validity or legality of any claim where the warrant is regular on its face?"

To answer your question, I find it necessary to determine your status and duties since you first qualified and entered office.

Chilton County has all the time had a population of not more than fifty thousand according to the federal census. By Act No. 378, approved September 15, 1915, the office of County Treasurer in counties of less than fifty thousand population was abolished, not merely suspended.—*State ex rel vs. Bugg*, 196 Ala. 460. This act was codified in Code of Alabama, 1923, as Article 2 of Chapter 17 and its provisions, unchanged, so far as Chilton County is concerned, continue to be the law in Chilton County except as modifies by Local Act No. 162, approved August 21, 1923. By Section 316 of the Code of Alabama there is made provision for designating a county depository in counties having a population of not more than fifty thousand according to the last preceding federal census. By Section 318 of the Code of Alabama the duties and liabilities of such depository is fixed. This section reads as follows:

"The bank or banks so designated as depositories of county funds shall be charged with all the duties and subject to the same liabilities in so far as the safe keeping and paying out of the funds of the several counties are concerned, as are now imposed by law on county treasurers."

Section 323 of the Code of Alabama provides for the designation of some individual to act as county treasurer if the Board of Revenue or Court of County Commissioners is unable to designate any depository for the county funds in their county, etc.

Section 323 of the Code of Alabama limits the duties of the one appointed to act as county treasurer as follows:

"All acts required by law to be performed by the County Treasurer, outside the receipts and disbursements of the county funds, shall be performed by the president of the Board of Revenue or Court of County Commissioners of the county."

Said section confines the duties of the one appointed to act as County Treasurer to the receipt, safe keeping and disbursements of the county's funds. The disbursements to be made by such treasurer on war-

rants drawn by the president of the Board of Revenue or Court of County Commissioners.

Such County Treasurer could hold office when appointed for only one year.—Jenkins vs. State ex rel Watkins, 219 Ala. 554.

Such was the status of a county treasurer, or one acting as county treasurer of Chilton County, prior to the passage of Local Act No. 162, approved August 21, 1923. The only parts of the local act that are constitutional and valid are Section 1, Section 2 and the proviso in Section 3. All the rest of the Act is clearly in contravention of Section 45 of the Constitution of Alabama when it provides:

“ * * * and no law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be reenacted and published at length.”

Said act clearly attempts to revive Chapter 12 of the Code of 1907 as to Chilton County, as it was prior to the passage of Act No. 378 approved September 15, 1915, by reference to its title only, and without reenacting the provisions desired and publishing them at length as required by the said section of the Constitution.

In my opinion, the only effect of said local act was to provide for the election of a county treasurer of Chilton County by the qualified electors of Chilton for a term of four years, instead of being appointed for a term of one year, under conditions named by the Court of County Commissioners, as provided by Section 322 of the Code of Alabama, the duties and obligations of the elected Treasurer remained the same as provided by Act No. 378, approved September 15, 1915, for the one appointed to act as treasurer.

Under said last named act the duties of the one acting as county treasurer of Chilton County were: to receive and safely keep the funds of the county and pay them out on warrant signed by the president of the Court of County Commissioners.

In view of the foregoing, will say, in answer to question (a) that, in my opinion, when a warrant was drawn by order of the Commissioners Court of Chilton County, directed to the Treasurer of Chilton County, and signed by the Judge of Probate of the County, who was president of the Commissioners Court of Chilton County, and there were sufficient funds on hand for the payment of that class of warrants, it was your duty to pay it.

In answer to your question (b) will say that, in my opinion, it is not your duty, as Treasurer of Chilton County, to make any investigation of any claim before paying it, where the warrant is signed by the Judge of Probate, the President of the Court of County Commissioners, as required by law.

In answer to your question (c) will say that ,in my opinion, the answer to question (b) also answers your question (c).

In answer to your question (d) will say that if you duly paid a warrant drawn by order of the Court of County Commissioners of Chilton County and signed by the Probate Judge of Chilton County, out of funds on hand subject to such a warrant, no responsibility rests on you, as Treasurer of Chilton County, to determine the validity or legality of such claim. Section 323 of the Code of Alabama, in my opinion, relieves you of such duty.

The valid portion of Local Act No. 162, approved August 21, 1923 did not affect Article 2 of Chapter 17 of the Code of Alabama, except: that, it provided for the election, by the qualified electors of Chilton County for a term of four years of a Treasurer of Chilton County, instead of having one appointed by the Court of County Commissioners of Chilton to act as Treasurer for a term one year, under conditions named in said Section 322 of the Code of Alabama. This provision of the Local Act was compulsory on the County and necessarily takes away from the Court of County Commissioners the duty and privilege of designating a county depository or of appointing one to act as Treasurer of Chilton County. All the provisions of said Article 2 as to the duties of the one acting as county treasurer remained unaffected by said local act, as said act in no way provides for or changes the duties of the treasurer or the method of paying the treasurer for service.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 4, 1933.

Hon. W. H. Gillespie,
Sheriff, Chilton County,
Clanton, Alabama.

Funds which have been transferred under Section 304, Code of Alabama, 1923, from the Fine and Forfeiture Fund to the General Fund may, under certain conditions, be retransferred to the Fine and Forfeiture Fund.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 30, 1933, in which you request my opinion as follows:

"About the first of January, 1931, there was a surplus in the Fine and Forfeiture Fund of Chilton County of something like seven or eight

thousand dollars, which surplus, or mose thereof, was by order of Commissioners' Court of said County, acting under Section 304 of the Code, transferred to the General Fund of the County.

"Due to the fact that the County was required by the State Jail Inspector to remodel and rebuild the jail in this County, thereby necessitating the use of the Montgomery County Jail during the major portion of the year, 1931, and the incurring of transfer fees in excess of \$2500.00 which you have heretofore held was a charge against the Fine and Forfeiture Fund, the amount of said fund become depleted, and there are now claims of \$1,000.00 or thereabouts, registered against the Fine and Forfeiture Funds with insufficient funds to pay them.

"There is and has been at all times since the transfer \$1,000.00 or more to the credit of the General Fund of the County. Has the Commissioners' Court of Chilton County the authority to enter the re-transfer from the General Fund to the Fine and Forfeiture Fund Account of enough money to pay the present outstanding claims against such funds?"

It is my opinion that if at the end of any fiscal year, the County Treasurer transfers funds from the Fine and Forfeiture Fund to the General Fund by, or under the authority of Section 304, Code of Alabama, 1923, when at the time, there were in fact registered claims and lawful claims or charges outstanding against said fund, these funds may be retransferred to the Fine and Forfeiture Fund of the County or so much of it as is necessary to take care of such claims. It is true there is no provision provided by said Section for such retransferring; but as this office held in an opinion of October 15, 1931, to Hon. L. H. Reynolds, Judge of Probate, of Chilton County, "money in the General Fund transferred wrongfully or under mistake of law to the Road and Bridge Fund, could and should be retransferred to the original fund from which it came." This seems to me to be sound and a safe construction of that statute, and so in the case we now have under consideration, under the facts stated by you, I am of the opinion such transfer can be made back to the Fine and Forfeiture Fund of your County.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

March 4, 1933.

Mr. Lewis F. Jeffers.
Trustees Loan & Guaranty Company, Inc.
2010—2nd Ave.,
Birmingham, Alabama.

Domestic corporations, which are in course of liquidation and not

attempting to carry on, are not subject to franchise tax set out in Section 54 of an Act approved July 22 1927 (General Acts 1927, p. 137).

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 6, 1933, in which you request my opinion as follows:

"This letter is to confirm our conversation of Saturday relative to the small Building and Loan Association here and its franchise tax. On a separate sheet I am listing the assessments as made by the State Tax Commission of Alabama against these associations. You will notice that against the Provident Building & Loan Association the assessments are for 1928 and 1929 and against the Fidelity Building & Loan Association they are from 1926 through 1932. These two associations were merged in 1929.

"As related to you Saturday, these associations are being liquidated, and inasmuch as their assets are real estate for which there is no market and very little rental value, the ad valorem tax on real estate is in itself too much of a load for it to carry while it is in the process of liquidation.

"The Fidelity Building & Loan Association is being liquidated under orders of the State Superintendent of Banks and this liquidation is a very slow process due to the fact that it is almost impossible to sell real estate at this time.

"As related to you Saturday, the **difference** between this case and the **other** building and loan association is that this one is **liquidating** and the **rest are not**. In other words, the others will have a chance to make this tax back in the future, while this one will not. Furthermore, this tax load will get heavier and heavier as the liquidation goes on, and inasmuch as it will probably take a number of years to fully liquidate this association, these taxes will simply destroy any equity which the general public may have in the association and, therefore, I do not feel that it is fair and equitable that inasmuch as it is being liquidated and is not doing business that it should be forced to pay these taxes and be assessed for taxes in the future. I am sure that it is not the desire nor the intent of the State Tax Commission to so penalize companies in this condition."

Basing my opinion upon the facts as set out by you above, I do not believe it was ever the intention of the Legislature, under Section 54 of an Act approved July 22, 1917, (General Acts 1927, p. 139) to impose upon domestic corporations the franchise tax set out above, where the corporation is in the course of liquidation for the reason that when a concern starts out to liquidate, it is in truth and in fact, in the course of dissolution. Li-

liquidation means simply that the concern is not able to go on; that it is falling behind and to save, as far as possible, all who have money invested in such concern from absolute loss, this could mean nothing else than that the concern agree to sell out all its assets and put them in money and pay off as far as it will go, and close the business. It is my opinion the legislative intent in passing this section, was to place this tax on all going concerns that were in business for profit, but not concerns that are honestly making an effort, through liquidation, to serve its creditors and stockholders and has given up all hope of profit.

Therefore, it is my opinion that this tax does not apply to such concerns as detailed above by your statement of facts.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 11, 1933.

Mr. C. B. Burkett, Member,
Court of County Commissioners,
Ashford, Houston County, Alabama.

Section 5076, Code of Alabama, 1923, applies to the individual members of the Commissioners Court or Board of Revenue, or other like governing body, and not to the Court as a whole.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 13, 1933, in which you request my opinion as follows:

"Can the Court of County Commissioners employ one to do work for the county on the county highways who is a relative of any member of the Court of County Commissioners?"

In the case of Garrison, Probate Judge, vs. Sumners, 134 So. 675, our Supreme Court in construing Section 5076, Code of Alabama, 1923, held that this Section applied to the individual members of the Court of County Commissioners or Board of Revenue and not to the Court as a whole. In other words the Court may employ a relative of a member but an individual member is prohibited under the above Section from making such employment. Should an individual member make such employment it would be void and the Judge of Probate would be without power to issue warrant for payment

under such employment. If Section 5076, supra, has been amended, I am unable to find it.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1933.

Hon. L. A. Durham.
Tax Collector, DeKalb County,
Fort Payne, Alabama.

Act No. 287 (Acts 1932, page 282) does not relieve the Tax Collector from collecting all the taxes due by the owner of the property but only permits mortgagees or other lien holders to pay the pro rata part on the property included in their mortgage under the conditions set out in the Act

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 2, 1933, in which you ask if I understand your meaning:

Does Act No 287 of the Legislature of 1932 permit taxpayers to pay on their personal property without paying on the remainder of their property and thereby secure a release from the lien of the State of such personal property?

In answer I beg to advise that the Act to which you refer applies only to mortgagees and other lien holders and not to the original owners of the property who made the assessments. It is therefore my opinion that so far as the owner is concerned, it is the duty of the Tax Collector to collect the entire assessment out of the personal property.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1933.

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

Where a foreign corporation coming within the terms of House Bill 12 approved October 22, 1932, levying an excise tax for the privilege of engaging in the business of banking and on conducting financial institutions, is operating in the State of Alabama, the taxable net income for the purpose of such Act should be the gross amount of income received in the State of Alabama or from Alabama operations less reasonable expenses allocable to Alabama operations and less the deductions allowed by the Act which should be allocated to Alabama.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 6, 1933, in which you state:

"House Bill 12 approved October 22, 1932, levying an excise tax for in the privilege of engaging in the business of banking and of conducting financial institutions within this State provides that such tax shall be measured by the net income for the taxable year and shall be 'at the rate of five per cent of such net income'. The Act does not seem to contemplate that the financial institution should conduct a business elsewhere than in the State of Alabama, although in defining 'financial institution' it does not place a limit to include only those institutions located within the State.

"In administering this tax we find that there are financial institutions which have their home and chief office outside of the State of Alabama and conduct financial institutions in a number of other states as well as within the State of Alabama. We are compelled to inquire as to how we are to arrive at the net income for the measure of the excise tax of institutions which conduct their business both within and without the State of Alabama, and which institutions find it impossible to separate the income received from business conducted in Alabama from the income received from business conducted in other states, and which institutions find it impossible to separate the expenses of conducting a business within Alabama from the expenses of conducting a business in other states. In other words, where it was not contemplated that it would be necessary to separate such income and expenses prior to the enactment of the excise tax law how should the net income be arrived at for the purpose of collecting an excise tax for the privilege of conducting a financial institution in this State when same is conducted by an institution doing business both within and without the State."

In reply I advise that in my opinion the proper method of determining the net income for corporations such as you describe would be the gross income from Alabama operations less the reasonable expenses and less deductions properly allocable to Alabama. It would seem that such corporations should be required to so keep their books as to show what portion of their business is properly allotted to Alabama.

In view of the fact that the law was passed in October and no rules had been prescribed it seems that in determining the tax due under the return made for the year 1932 that the Tax Commission should adopt any reasonable method which would approximately show the proper net income which should be allocated to the State of Alabama on which the excise tax should be paid.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1933.

Hon. Bradford Cooper,
County Treasurer Marion County,
Hamilton, Alabama.

Section 281, Constitution, does not apply to Chief Deputy Sheriffs and their office.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 4, 1933, in which you request my opinion as follows:

"I wish to know if Section 281, page 413, has reference to a Chief Deputy Sheriff who was appointed by the Sheriff at the beginning of his term and the salary fixed at \$100.00 per month. This salary has been cut to \$75.00 per month since January 1, 1933. If said Deputy contends for the \$100.00 per month can he compel the Commissioners Court to put it back as it was at the beginning of his term?"

Section 281 of the Constitution does not apply to a Chief Deputy Sheriff as he has no term of office nor does he have a fixed salary. He serves at the will of the Sheriff appointing him and his salary is not fixed, but may be set within certain limitations.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1933.

Hon. H. H. Hurt,
Register, Circuit Court,
Tuskegee, Alabama.

Where Register of the Circuit Court in Equity had deposited fiduciary fund in a bank which closed, he is liable for the full amount of such fiduciary fund.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 20, 1933, in which you state:

"As Register of the Circuit Court in Equity of Macon County, Alabama, I had \$500 00 Fiduciary Fund in the Macon County Bank of this city when it closed its doors in May, 1931.

"Am I wholly responsible for this amount or am I only responsible for the pro rata share that the depositors receive on a settlement of the affairs of the Bank"?

In my opinion your bond would be liable for the entire amount of the fiduciary fund which was in the closed Macon County Bank. Of course, if a dividend should be paid you would get the benefit of it.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1933.

Hon. G. L. Malone,
Judge of Probate, DeKalb Co.,
Fort Payne, Alabama.

Construction of bridges by county over streams.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 6, 1933, in which you request my opinion as follows:

"Is there any limit as to the distance between two bridges over the same stream, both bridges being built and maintained by the County?"

I understand that toll bridges cannot be within two miles of one another over the same stream and I am wondering if something like this does not apply to county bridges."

I find no law or statute that would prohibit your County from building bridges as close together across the same stream as is necessary to complete any road or highway. It is often the case that the same stream has to be bridged with more than one bridge within a short distance.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 23, 1933.

Hon. L. H. Reynolds,
Judge of Probate, Chilton County,
Clanton, Alabama.

Courts of County Commissioners—Appropriations for vocational schools.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 22, 1933, in which you request my opinion as to whether or not the Court of County Commissioners of Chilton County can make an appropriation of \$850.00 to the Isabella School of Chilton County which is equipped to teach vocational subjects and which is duly recognized by the State Department of Education as a vocational school of the Smith-Hughes type.

I am of the opinion that your inquiry should be answered in the affirmative. Authority for a Board of Revenue or Court of County Commissioners to make appropriations of this nature is found in Acts of 1923, page 692, which deals specifically with vocational schools of the Smith-Hughes type, and also Acts of 1931, page 687 which deals with public schools in general.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 24, 1933.

Hon. Joe Poole,
Member, House of Representatives,
CAPITOL.

Occasional, as used in the Tidwell Motor Carrier Act of 1932, means hauling now and then; such a person must not hold himself out as being engaged in the transportation business; if such person does hold himself out as being engaged in the transportation business, even though he hauls only now and then, such person must qualify under the Act and is not an occasional hauler.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of March 24, 1933, has been received. Your letter follows:

I will thank you to give me an opinion on the meaning of the words: "Occasional hauler as used in the Tidwell Contract-Common Carrier Act of 1932.

Section 1 of Article 1 provides, among other things that: "Any person, firm, association or corporation who does not regularly engage in the transportation business, but occasionally transports persons or the property of others for hire, shall not be construed to be "common carriers." "Occasionally," as used in this Act, means: "Incidental"; "made or happening as opportunity requires or admits"; "casual"; "acting or occurring now and then. If a person is not engaged in the transportation business, but is engaged in some other business as a means of livelihood, but engaged in the act of transporting now and then, such person is an occasional hauler, as contemplated in the Act. If the person holds himself out as being engaged in the transportation business, although he may transport only now and then, such a person is not such an occasional hauler as the Act contemplates.

Yours very truly
THOMAS E. KNIGHT, JR.,
Attorney General.

March 25, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission,
CAPITOL.

Persons selling colored spectacles for the sole purpose of protecting

the eyes from glare and not intending in any way to change or affect the vision, not liable for license for selling spectacles provided for by Schedule 49, Acts 1919, page 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 15, 1933, in which you ask my opinion as to the liability for license of persons selling cheap spectacles with colored glasses which are sold and used for the sole purpose of protecting the eyes from glare under Schedule 49, Acts 1919, requiring a license of each person engaged in the business of selling spectacles. or eye glasses.

In my judgement this Section was not intended to apply to eye glasses of this sort but applies only to those who sell spectacles or eye glasses which purport to or do affect vision.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 27, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Rural School houses, Erection, Repair and Equipment Fund—Act No. 370, H. B. 350, approved July 8, 1931 (Acts 1931, page 435) as amended by Act No. 306 H. B. 148, approved November 9, 1932.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 8, 1933, relative to whether or not you should grant State Aid under Act No. 370, H. B. 350, approved July 8, 1931 (Acts 1931, page 435) as amended by Act No. 306, H. B. 148, approved November 9, 1932 where all the conditions of Section 370 to 386 inclusive, of the School Code of 1927 have been complied with, with the exception of making application for State Aid under Section 372.

I am of the opinion that the failure to make application for State Aid under Section 372, School Code of 1927 will not preclude the granting of aid under Act No. 370, as amended, supra, provided that all conditions of Act No. 370, as amended, supra, have been fully complied with.

One of the requirements of Act No. 370, as amended, *supra*, is that the provisions of Sections 370 to 386 inclusive of the School Code of 1927, have been fully complied with. Section 372, School Code, provides that the County Board of Education **may** make application for State Aid under certain conditions. This provision is in no sense mandatory. Therefore, if the other provisions of Section 370 to 386 inclusive, have been complied with, the provisions of Act No. 370, as amended, *supra*, relative to Sections 370 to 386 inclusive, School Code of 1927, have been fully met.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

March 27, 1933.

Hon. E. T. Bolding,
County Superintendent of Education,
Russellville, Alabama.

Taxation—Warrants of county and city are exempt from State ad valorem taxation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 7, 1932, in which you state that the City School Board of Russellville and the County Board of Education of Franklin County have issued certain interest bearing warrants.

You request my opinion as follows:

1. Are those warrants subject to state and county ad valorem taxes?
2. Should the bank list these warrants as taxable assets?
3. Should individuals return those warrants as assets subject to taxation?

I am of the opinion that your first inquiry should be answered in the negative under and by virtue of Section 2(a) of the Compiled Revenue Acts of 1929 (Acts of 1923, page 152) which provides as follows:

"2 (a) Persons and property exempt.—The following property and persons shall be exempt from ad valorem taxation and none other:

(a) All bonds of the United States and this State, and all county and municipal bonds issued by counties and municipalities in this State; all property, real and personal, of the United States, and of this State, and of county and municipal corporations in this State; all cemeteries;

all property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided however, property, real or personal, owned by an educational, religious or charitable institution, society or corporation, let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for educational religious or charitable purposes; all mortgages, together with the notes, debts, and credits secured thereby on real and personal property situated in this State which mortgages have been filed for record and the privilege tax paid thereon; all money on deposit in any bank or banking institution in this State and all other solvent credits, all warrants issued by county boards of education and city boards of education for the purpose of erecting, repairing, furnishing school buildings or for other school purposes, are exempt from taxation."

In answer to your second and third questions, I am of the opinion that the warrants should be properly listed as other assets but marked subject to the exemption.

The opinion rendered to you as County Superintendent of Education of Franklin County under date of February 18, 1933, being in conflict with the above, is hereby overruled and withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 27, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Effect of cancellation of warrants under Section 385,
School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 24, 1933 in which you request my opinion as to whether or not the provisions set out in Section 385 of the School Code 1927, prevail now in so far as warrants issued prior to October 1, 1932 and also issued since October 1, 1932 are concerned.

I am of the opinion that the provisions of Section 285, *supra*, still prevail in so far as cancellation of the warrants in question is concerned.

Relative to the warrants issued prior to October 1, 1932, I am of the opinion that same should be returned to the State Comptroller for cancellation. The funds in question, being considered as "unincumbered" on September 30, 1932, reverted to the State Treasury to the credit of the fund or funds from which the appropriation was made, under Section 22 of Act No. 37, approved September 27, 1932, known as the "Budget and Financial Control Act." In other words, the warrants should be treated as if they had not been issued, and the cancellation of same will have this effect.

Relative to the warrants issued on or since October 1, 1932, I am of the opinion that when such warrants are returned to the Comptroller for cancellation, they are placed to the credit of the Rural School House Fund and there remain to the end of the present fiscal year, and if "unincumbered" at that time, revert to the State Treasury to the credit of the fund or funds from which the appropriation was made.

In order to facilitate matters of this nature in regard to "unincumbered balances," I wish to state that, in my opinion, it is not necessary that warrants be issued against any particular fund in order to incur same.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 27, 1933.

Hon. Hugh White, president,
Alabama Public Service Commission,
CAPITOL.

Under Contract-Common Carrier Motor Vehicle Act of 1932 the mileage tax is paid on empty movements of vehicles as well as loaded movements, if and when they are engaged in transportation for hire on the highways of Alabama.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of February 28th. Your letter follows:

"Under the provisions of Section 22 of the above named Act, every person subject to said Act and to the payment of mileage taxes thereunder is required to pay mileage taxes in accordance with the scale set out in said Section 22.

"The question has been raised by some of those holding permits under this Act and engaged in the business of carrying property for hire

by motor vehicle, whether such mileage tax is required under the Act on empty movements of the motor vehicle as well as movement of the vehicle loaded.

"The position is taken by some of these persons that the mileage tax is payable only on loaded movements of the vehicle.

"Heretofore the Commission has taken the view that such mileage tax should be paid on both the loaded and empty movements of the vehicle, if and when they are engaged in transportation for hire on the highways of Alabama.

"Please advise us whether such mileage tax must be paid on empty movements of such vehicles subject to the Act and to the payment of mileage tax thereunder as well as upon loaded movements."

The proceeds coming from the Alabama Contract-Common Carrier Motor Vehicle Act of 1932, after cost of enforcing the Act is taken out, is used for the maintenance and construction of public highways in the State. It is my judgement that those engaging in the business of carrying property for hire must pay the mileage tax on both the loaded and empty movements of the vehicle, if and when they are engaged in transportation for hire on the highways of Alabama. Empty movements of the vehicle call for payment of the mileage tax. Empty movements are chargeable with the mileage tax in the same way that loaded movements are. Such, in my judgement, is the plain intent, spirit, and letter of the Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 28, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Cases docketed before the approval of the Trial Tax Amending Act of 1931, are governed by the original Trial Tax Act of 1919; cases docketed after the Trial Tax Amendment of 1931 are governed by said amended act.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of March 17, 1933, has been received.

The Trial Tax Act of the Legislature of 1919 and the Amendment of 1931 have been examined.

It is my judgement that the amending act of 1931 does not affect any cases except those docketed subsequent to the passage and approval of the amending act. As regards any and all cases docketed before the passage of the amending act, the trial tax is paid and governed by the original act of 1919.

All former opinions in conflict with this opinion are hereby recalled.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 28, 1933.

Hon. Watkins M. Vaughan,
Judge of Probate, Dallas County,
Selma, Alabama.

The filing tax provided by Section 21½ of Act No. 163, approved July 22, 1927, does not apply to mortgages of national banks.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of February 3, 1933. You write as follows:

"The Commercial National Bank filed a mortgage, in this office for record given by Thos. H. Chapman to the Commercial National Bank. The Bank enclosed recording fee but insisted the national banks were not liable for the mortgage tax, citing an opinion of the Attorney General rendered to the Judge of Probate of Houston County, Alabama."

You further state that the State Tax Commission writes you:

"This Commission did not request this opinion and has not accepted it as a guide for this Commission, which explains why the opinion was not furnished you before this time.

You further state:

"It has been the opinion of Judge Vaughan that this is not a tax at all. There is no tax levied on mortgages, and no tax is paid unless that mortgage is filed for record; then the revenue laws of Alabama require that a privilege fee or tax be collected as a filing privilege. It appearing that this matter comes under Privilege and License law, rather than under the tax provisions."

You ask for a letter in reply which will place your office in position of authority on the subject mentioned.

In reply will say that said opinion to the Judge of Probate of Houston County is still the opinion of this office and gives your office the same protection as if made to you directly.

National banks are federal institutions.

"National banks are not merely private moneyed institutions, but agencies of the United States, created under its laws to promote its fiscal policies, and hence the banks, their property, and their shares cannot be taxed under State authority, except as Congress consents, and then only in conformity with restrictions.—First National Bank of Guthrie Center v. Anderson, 70 L. Ed. 295. The respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their assets or franchise, were it not for the permissive legislation of Congress."—Citizens Savings Bank v. Owensboro, 173 U. S. 656, 43 L. Ed. 840.

In speaking of this mortgage filing tax, in the case of Federal Land Bank of New Orleans v. Crosland, 67 L. Ed. 705, the Supreme Court of the United States says:

"Of course, the State is not bound to furnish its registry for nothing. It may charge a reasonable fee to meet the expenses of the institution. But in this case the Legislature has honestly distinguished between the fee and the additional requirement that it frankly recognizes as a tax. If it attempted to disguise the tax by confounding the two, the courts would be called upon to consider how far the charge exceeded the requirement of support, as when an excessive charge is made for inspecting articles in interstate commerce. * * * But it has made no such attempt. It has levied a tax on mortgages, using the condition attached to registration as a practical mode of collecting it. In doing so, by the construction given to the statute by the Supreme Court, it has included mortgages that it is not at liberty to reach. The characterization of the Act by the Supreme Court, as distinguished from the interpretation of it, does not bind this Court. * * * It is said the lender may collect the money in advance from the borrower. We do not perceive that this makes any difference. The statute says the lender must pay the tax but whoever pays it, it is a tax upon the mortgage and that is what is forbidden by the laws of the United States."

Section 548 U. S. C. A., gives the extent to which a state may tax a national bank or shares in a national bank, but this does not include authority to tax mortgages of a national bank.

You will see from the above quotation from the case of Federal Land Bank v. Crosland, that the Supreme Court of the United States has already decided that our mortgage filing tax is a tax against the mortgage. As Congress has never given the states authority to tax the mortgages of a national bank, the filing tax provided by Section 21½ of Act No. 163, approved July 22, 1927, "is not at liberty to reach" such mortgages.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 28, 1933.

Hon. G. W. Miller,
Circuit Clerk Coosa County,
Rockford, Alabama.

Where defendant pleads guilty to making liquor there is no authority for the trial judge to relieve the defendant from payment of the solicitor's fee and the trial tax required by law.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 21st in which you state:

"On November 15th, a defendant in the Circuit Court of this County, charged with making liquor entered a plea of guilty. The Court fixed his punishment at two to three years in the penitentiary and the defendant was duly sentenced. On the same date the court suspended the sentence and placed defendant on probation during good behavior for five years upon the payment of the cost including seizure fee. On the same date, execution was stayed until January 10, 1933. On the date of plea of guilty, defendant and two sureties confessed judgement in open court for the cost of the case.

"Recently the trial judge on a motion to re-tax the cost has relieved the defendant from payment of the Solicitor's fee and the trial tax, the two amounting to \$33.00. I desire to know if the Court has the power to thus re-tax and thereby remit in effect, the payment of the Solicitor's fee and trial tax in such a case. Or shall the Clerk pro-

ceed to issue execution for the collection of this Solicitor's fee and trial tax as he would do in other cases. Please advise."

In reply I beg to advise that the trial tax is definitely fixed by law as a tax payable to the State and County, and is chargeable upon every case that goes on the docket. I know of no authority for the Court to relieve the defendant of the payment of this tax.

Section 3738 of the Code of 1923 provides:

"That the following solicitors' fees shall be taxed against the defendant on conviction, to be collected as other costs and paid unto the County or State Treasury as may be authorized or required by law."

This is a clear mandate of the statute and I know of no authority for the Court to relieve the defendant of the payment of the solicitor's fee. The statute in my opinion is mandatory.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 30, 1933.

Hon. Jos. R. Bell,
County Solicitor, Lowndes Co.,
Hayneville, Alabama.

Chief Deputy Sheriff's salary may be fixed at any time within the limitations fixed by law. His office does not come under Section 281 of Constitution of Alabama, 1901.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 9, 1933, in which you request my opinion as follows:

"In January 1931 Davis S. Rogers of Lowndes County was appointed by the sheriff of the county, as chief deputy sheriff for a period of four years, his term as deputy sheriff running concurrently with the term of the sheriff.

"That in accordance with Section 10188 of the Code of 1923 (Vol. 4) D. S. Rogers was appointed with a salary fixed at \$1500.00, fixed by the Board of Revenue of Lowndes County, as provided in said Section 10188.

"Recently the Board of Revenue has seen fit at a regular meeting to reduce this salary to \$1200.00 per year.

"Can the salary of a chief deputy sheriff, be increased or decreased during the term for which he has been appointed."

It is my opinion that the Commissioners Court can at any time fix the deputy sheriff's salary at any amount between the limitations fixed by law. The deputy sheriff appointed under the general statute has no term of office but serves at the will of the sheriff appointing him, therefore, does not come under Section 281 of the Constitution of Alabama, 1901.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1933.

Hon. Paul J. Hooten,
Senate Chamber,
CAPITOL.

Fees of constables.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 6, 1933, in which you ask my opinion as follows:

"Under Local Acts 1931, Randolph County has an Inferior Court, same criminal jurisdiction over all misdemeanors:

"In the specific instance of an arrest by a lawful and bonded constable in a V. P. L. Case is made, the defendant convicted; in that case is the arresting officer, the constable, allowed the arresting fee, the seizure fee, the fee for bond if bond is made, and if no bond is made a mileage fee for carrying the prisoner to jail?

"Or if said arrest is made by said constable, does the said fee separately and severally go to the sheriff?

"Can the sheriff of said county in said instance notify the clerk legally not to pay any or either of said fees to the constable, but that the same must be paid to the sheriff?

"If the clerk of said court refuses to pay said costs to the constable and pays the same to the sheriff, can the sheriff or clerk, both or either

be made to reimburse the said constable? In other words is the constable entitled to his fees in V. P. L. arrests, when the same are convicted or is the sheriff?"

It is my opinion where the constable makes the arrest, seizes the property and approves the bond, in violations of the prohibition law, if he is acting inside of his territorial jurisdiction, he is entitled to such fees.

Your other question involves legal procedure, and I do not think it proper for me to advise as to this.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1933.

Hon. John A. Lancaster,
Member, House of Representatives,
Wetumpka, Alabama.

Local Bills — Payment of advertisement.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 10, 1933 in which you state the following:

"A local bill, duly advertised, was introduced by me as a member of the House of Representatives on February 27, 1931, and was passed by the House on March 4, 1931. This bill was killed in the Senate. The same bill was re-advertised and re-introduced by me in the House and was passed by the House on May 19, 1931. On June 9, 1931, this same bill was passed by the Senate."

You request my opinion as to whether or not the first advertisement, as well as the second advertisement, should be paid by the county.

I am of the opinion that the first advertisement in question may be paid by the county. An opinion of the Attorney General rendered to the Judge of Probate of Fimore County under date of February 28, 1931 (Book 6, page 374, off. ed.) held that the payment of advertising local bills was governed by Section 6755 (14), Code of Alabama, 1923) until June 18, 1931, the date when Act No. 275 (Acts 1931, page 325) became effective. After that date the payment thereof was governed by Act No. 275, supra.

Relative to Section 6755 (14) Code of Alabama, 1923, said opinion held that the county could pay for advertising of a local bill **whether same was**

passed and became a law or not; but that it was not mandatory that the county pay for such advertising.

Relative to Act No. 275, supra, said opinion held that the expense of advertising is a charge against the general fund of the county, but the expense of advertising is not a charge against the county unless the bill is introduced, passed, and becomes a law.

Applying the above to your particular inquiry, the county may pay for the first as well as the second advertisement, as the first advertisement was made prior to June 18, 1931, the date Act No. 275 became effective.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller.
CAPITOL.

Alabama Motor Carrier Act of 1932 — \$10.00 fee paid to Secretary of State under Section 21, goes to credit of General Fund of State.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 16th in which you request my opinion as to whether or not the \$10.00 fee required by Section 21 in the Alabama Motor Carrier Acts (Acts, 1932, page 178) should go to the credit of the General Fund of the State under said section or to the credit of the Motor Carrier Fund as referred to in Section 39 of said Act.

I am of the opinion that the \$10.00 fee in question goes to the credit of the General Fund of the State.

Section 21 of the Act in question provides as follows:

"Section 21. If an operator be a non-resident of this State he shall prior to operating any motor vehicle for hire, file with the Secretary of State an instrument of writing under his hand and seal, if such operator be a natural person, and if a corporation, under the seal of the corporation and signed officially by the president and secretary thereof, designating an authorized agent or agents residing within the State, together with a fee of \$10.00 for filing same, which \$10.00 shall be for the use of the State.

Section 39 of the Act in question provides that all excise mileage taxes, fees, and other amounts collected under this Act (with the exception of \$1.00 application fee paid to the Judge of Probate) shall be paid into the State Treasury within thirty days after receipt thereof to the credit of the "Motor Carrier Fund."

It is a rule of statutory construction that special provisions relating to specific subjects control general provisions relating to general subjects, and things specifically treated will be construed as exceptions to general provisions.—**Herring v. Griffin**, 511 Ala. 225, 100 So. 202.

Applying the above rule to the instant case it follows that the specific provisions of Section 21 control the general provisions of Section 39. Therefore, the fees in question should be for the use of the State as provided for in Section 21 which, in my opinion, means the General Fund of the State.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1933.

Hon. J. M. McLeod,
Judge of Probate
Camden, Wilcox County, Ala.

County is without authority to employ assistant to the State Tax Commission.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 30th in which you request my opinion as follows:

"Mr. R. H. Faulk, Tax Adjuster of Monroe County was in my office in reference to some special work he is doing for the State Tax Commission, and has asked me for a helper. Please write me right away if it will be all right for the county to put a helper with him for a few weeks.

"I want to be in my right before I issue a warrant. So please write me a letter and give your opinion later."

I know of no law that would authorize you to employ a person to act

as a helper or an assistant to any tax agent sent out by the State Tax Commission.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1933.

Hon. H. F. McElderry, Member,
House of Representatives,
Talladega, Alabama.

Judges of the County Courts of the various counties in Alabama have authority to suspend sentences and grant probation to defendants convicted in said Courts.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 10, 1933, in which you request my opinion as follows:

"Will you give me an opinion as to whether or not the County Courts of the various counties of the State, presided over by the Probate Judge as ex-officio Judge of such court, can suspend sentences in cases triable before him under the general Suspension Sentence Law of 1931?"

It is my opinion the various county courts of the State organized under the general laws where the Probate Judge serves as ex-officio Judge of said Court may at its descretion suspend the imposition or execution of sentences and place the defendant upon probation. You will note the Act which was approved July 14 1931 (General Acts 1931 page 444) says among other things:

"Section 1. The several courts of the state having original jurisdiction of criminal actions when it shall appear to the satisfaction of the Court trying the case, or his successor in office, that the ends of justice and the best interests of the public as well as the defendant, will be subserved thereby, shall have the power with the approval of the solicitor after conviction, or after a plea of guilty, or nolo contendere for any crime or offense in all cases where the punishment is fixed by the Judge or the jury at not more than ten years in the penitentiary, and in all cases where the defendant is sentenced to hard labor for the County, to suspend the imposition or execution of sentence and to place the defendant upon probation, etc."

Certainly, the County Court has original jurisdiction concurrent with the Circuit Court of all misdemeanors committed in their respective counties.

See Section 3809 of the Code of Alabama, 1923, which is as follows:

"3809. Jurisdiction of county courts. - The county courts have original jurisdiction, concurrent with the circuit courts, of all misdemeanors committed in their respective counties; and shall have and exercise all the powers, jurisdiction and duties conferred on county courts or judges of county courts by this article."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 5, 1933.

Hon. Sam D. Stearns,
Sheriff, Montgomery County,
Montgomery, Alabama.

Fees that may be charged by the Sheriff for arresting and feeding prisoners.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 31 1933, in which you request my opinion as follows:

"An opinion is desired by this office in regard to the payment of arresting fee and feed bill created by the City Police Department when making an arrest for the Sheriff of a county.

"For instance the City Police Department of Birmingham makes an arrest for the Sheriff of Montgomery County and when a deputy is sent for him, the city authorities demand and collect when surrendering prisoner to the detailed deputy an arresting fee of three dollars and so much per meal while prisoner is being detained.

"Is not this expense chargeable to the State or should the sheriffs of the various counties be liable for such expense?"

These fees are chargeable to the State. You should, in submitting your feed bill to the State for payment, show this item as coming from the Birm-

ingham Police Headquarters, but you should only pay the City of Birmingham the same rate you charge for feeding such prisoners held here in the jail of Montgomery County. The arresting fee in no case should be more than is allowed by statute and, of course, this fee will become a part of the costs.

Yours truly,
THOMAS E. KNIGHT JR.,
Attorney General.

April 5 1933.

Hon. A. F. Harmon
Department of Education,
CAPITOL.

Schools—Suit against County Board of Education for claim against employee.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 31, 1933 in which you request my opinion as to whether or not the County Board of Education or the County Superintendent of Education can be sued and held liable for payment of an account outstanding against an employee of the County Board of Education.

I am of the opinion that your inquiry should be answered in the negative. The outstanding account is against the employee proper and not against the County Board of Education or the County Superintendent of Education. However, in a suit against the employee the County Board of Education may be named as garnishee, but in such a case the provisions of Article 3, Chapter 298 (Section 8088-93) Code of Alabama, 1923, would be applicable.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1933.

Hon. R. Jess Wilson, Chairman,
Walker County Board of Education,
Jasper, Alabama.

Schools—payment of compensation due member of County Board of Education.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 28, 1933 in which you state the following facts:

That at the general election in 1928 you were elected a member of the County Board of Education of Walker County for a term of six years; that you entered upon your duties in November, 1928 and attended all the meetings and actively served as such member; that you served from that date until November, 1932, a period of four years, and during that time you did not render a bill for salary, services, or expenses and you did not draw any compensation therefor; that since January, 1933, you filed your account for said four years' services and mileage from November, 1928 to November, 1932 and same was held up pending the legality of same or the authority to pay same.

In view of the above you request my opinion as follows:

1. Is the claim a legal one against the school funds of your county?
2. Is the fact that the claim was not presented earlier a bar to the payment of said claim?

In answer to your first inquiry, I am of the opinion that the claim in question is a legal claim against the school funds under and by virtue of Section 92, School Code, 1927 which provides as follows:

92. Compensation of County Board.—The members of the County Board of Education shall receive from the public school funds of the County five dollars a day and their actual traveling and hotel expenses incurred in attending meetings of the Board, and transacting the business of the Board. The members of the County Board shall not be allowed pay for more than twelve days in any one year, and their expenses shall be paid in like manner as provided for the compensation of teachers. They shall not be required to hold teachers' certificates.

In answer to your second inquiry, I am of the opinion that the fact that the claim was not presented earlier would not bar the payment of same. I know of no authority whereby same would be barred because not presented at an earlier date.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

April 10, 1933.

Hon. D. C. Mathews,
Superintendent of Education,
Grove Hill, Clarke County, Alabama.

Under Senate Bill No. 70, made a law on March 8, 1933, County Boards of Education are authorized to pledge proceeds of county and district special school taxes for the purpose of procuring funds for paying teachers' salaries provided the amount so borrowed shall at no time exceed one-third of the sum paid out for current expenses during the preceding school year.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of April 10th has been received. Your letter follows.

"Please advise me whether or not County Board of Education, under authority granted in Senate Bill No. 70—Riddle—and approved March 8, 1933, are empowered to pledge proceeds of County and District special school taxes for the succeeding year if they choose to do so in payment of current obligation.

"I construe the law as being very plain and definite on the point but should appreciate your opinion on same."

I have examined the Act of the Legislature approved March 8, 1933. Section 130 of the School Code of 1927, has also been examined.

Under the provisions of the Act approved March 8, 1933 (Senate Bill No. 70), the County Board of Education is authorized to pledge the proceeds of the county and district special school taxes for the purpose of procuring funds to pay teachers' salaries, provided the amount borrowed shall at no time exceed one-third of the sum paid out for current expenses during the preceding school year.

Section 1 of said Act should be strictly followed in every detail in order to make such borrow legal and valid.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 11, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Extradition—Per diem fees of agent and guard.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 22, 1933 in which you state that R. L. Shamblin, Sheriff of Tuscaloosa County, made application to the Governor of Alabama to issue requisition on the Governor of California for the removal of Hosea T. Lewis, charged with commission of a felony, from California to jail in Tuscaloosa for trial in the indictment which had been returned by the Grand Jury of Tuscaloosa County and asked for a guard. The Governor issued a requisition on the Governor of California and issued a commission in which appears the following expression:

"Know ye, that R. L. Shamblin and guard is hereby authorized and empowered as agent on the part of this State, to receive from the proper authorities of the State of California, Hosea T. Lewis, charged with the commission of embezzlement (over \$25.00) and who is a fugitive from justice."

You request my opinion as to whether or not under the above statement of facts, per diem fees may be paid D. T. Turner in view of the fact that there was no commission issued to D. T. Turner in his name.

I am of the opinion that your inquiry should be answered in the negative.

Said fees cannot be paid as per diem fees for a guard under Section 3746, Code of Alabama, 1923 as said Section is applicable only to the removal of prisoners from one county to another within the State and not where it is desired to bring a prisoner into his State.—Biennial Report of the Attorney General 1918-1920, page 220.

Said fees cannot be paid under Section 3749, Code of Alabama, 1923, as said section provides for a fee to any person or persons **commissioned as agent** of this State to receive from another state any prisoner for the removal to this State to answer a charge of a felony. The commission in question was issued in the name of "R. L. Shamblin and guard." Such, in my opinion, is not sufficient to entitle D. T. Turner to the per diem fee under this section as he was not specifically named as agent on the part of the state as required thereunder.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 15, 1933.

Hon. A. F. Harman, Superintendent,
Department of Education,
CAPITOL.

1. A person to be qualified for appointment or election by a City Council or Commission as a member of the City Board of Education must be a resident of such city.

2. If, under law or facts of the case, a person handling or selling school books is in any way subject to the authority of the City Board of Education he is ineligible to appointment or election to the City Board of Education.

3. If, in the opinion of the City Council or Commission it has appointed or elected a person on the City School Board who is not a resident of the City or who is subject to the authority of the City Council or Commission, it should declare the position vacant and appoint or elect one who is qualified. The first appointee, however, may contend that he is qualified, and it would be necessary to oust him in accordance with the law.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of April 11th. You write as follows:

"At the request of Mr. J. E. Bryan, Superintendent of the Bessemer City Schools, I am submitting to you the following inquiries:

"1. Can the City Council or Commission elect a member of the City Board of Education who has for the past ten years resided with his family out of the city limits, paying tuition for his children on account of such non-residence merely upon his claim that he is a resident of such city, under Section 191 of the School Code.

"2. Under Section 191 of the School Code does it disqualify a person from serving on the City Board of Education who is at the time of his election in charge of handling and selling school books under the supervision and authority of the Board of Education.

"3. If it is unlawful or illegal to elect such a person as a member of the City School Board, is it the duty of the City Board of Education to declare the office vacant as provided in Section 192 of the School Code or does the member whose term has expired hold office until his successor is elected and qualified."

In reply to question No. 1 will say that, in my opinion, the facts stated do not qualify a person for election as a member on the City Board of Education. The mere claim of residence is not sufficient. Section 191 of the School Code, 1927, requires that he be an actual resident of the city.

In reply to question No. 2 will say that in the last clause of Section 191 of the School Code, it is provided: "but no person shall be appointed or elected to this Board under the provisions of this section who is, in any way subject to the authority of the Board." The word "Board" here means the City Board of Education, and you fail to cite any provision of law or to state any fact which makes the person handling or selling school books, subject to the authority of the City Board of Education and I have been unable to find any such provision. Of course, if, as a matter of fact or law, he is subject to the authority of such Board, he is disqualified from being a member of such Board.

In answer to question No. 3 will say that, if in the opinion of the City Council of Bessemer, a person upon said Board is not a resident of such city, and, therefore, not qualified to be a member of said Board, then, in my opinion, it should declare a vacancy and should, as provided by Section 192 of the School Code, proceed to fill the vacancy. Should the present incumbent be of the opinion that he is a resident of said city and otherwise qualified to fill such office, he may dispute the title or right of the last appointee. In such case, to oust him from office, it will be necessary to proceed in accordance with Sections 9932 and 9933 of the Code of Alabama.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Sheriff not entitled to reward offered by State when making an arrest for a felony committed within his own county.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 30, 1933, in which you request my opinion as follows:

"The sheriff of Randolph County has made application to be paid a reward offered by the Governor of Alabama on January 4, 1932, for

'the arrest and conviction of the unknown person or persons charged with the offense of robbing of the Bank of Wedowee, in the month of December 1931.'

"As a basis for this claim, he sets forth in his application that on December 2, 1932, he arrested Willie C. Evans, charged with said offense and that the said Willie C. Evans, has been duly tried and convicted and sentenced to the penitentiary; that he is now serving sentence and that there is no appeal pending.

"In support of his application he offers a certificate from the Judge of the Circuit Court, who presided at the trial of the case and a certificate of the Clerk of the Circuit Court of Randolph County. Copies of these certificates are hereto attached.

"Also attached hereto is a copy of a letter from the Clerk of the Circuit Court, stating that there are no other cases pending having connection with the offense above mentioned and that so far as the records of the Circuit Court of Randolph County show, 'The disposition of the Evans' case is final disposition of the whole matter.'

"Considering this statement of facts, please advise whether the sheriff of Randolph County can claim and receive a reward for arresting in said County a criminal charged with such offense as stated, where the crime was committed in the County of which the sheriff is an officer, and whether the amount of such reward can with authority of law be paid from the State Treasury.

"With regard to this matter and for your ready reference, I am herewith attaching copies of opinions, rendered from the Attorney General's office."

This office has consistently held that where a sheriff making an arrest for an offense committed in his own County, in which case reward has been offered by the Governor of Alabama, that such sheriff is not entitled to said reward, for the reason that he is charged with the enforcement of the laws of his county and receives the regular compensation for such services and that he should not be paid any extra compensation as a stimulant for performing the duties the law placed on him.

He is presumed when such an emergency arises to exert all his power to effectively carry out the duties placed upon him by accepting the office to which the people have elected him.

Biennial Report of Attorney General, 1928-1930, p. 317;

Biennial Report of Attorney General, 1918-1920, p. 518.

Morrell vs. Quarles, 35 Ala. p. 544.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Clerk of the Circuit Court while acting as Ex-Officio Clerk of the County Court is not entitled to fifteen cents for filing complaint in criminal cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 11, 1933, in which you request my opinion as follows:

Is the Clerk of the Circuit Court, while acting as ex-officio clerk of the county court, entitled to fifteen cents for filing complaint in criminal cases?

There is no authority of law for the Clerk of the Circuit Court while acting as Ex-Officio Clerk of the County Court to charge a fee of fifteen cents for filing complaint in a criminal case. The Clerk of the Circuit Court, when acting as Clerk of the County Court, is entitled to the same fees for like services as he is entitled to as Clerk of the Circuit Court. This applies in criminal cases. See Section 3804, Code of Alabama, 1923, which is as follows:

"Section 3804 Fees of Clerk of County Courts. — The fees and compensation of said clerks for their duties as clerks of the county court shall be the same as now allowed by law to the clerks of the circuit court in criminal cases, and shall be paid in like manner."

Section 3734, Code of Alabama, 1923, prohibits the charging of any fee in cases except such as are expressly provided by law, and further provides that the fees prescribed in the Code shall be the only fees that can be collected by any officer.

In reference to fees allowed Circuit Clerks, in civil cases, there is found only one provision of allowance of fifteen cents for filing any kind of a paper and that is for: "writ of certiorari, writ of prohibition mandamus, or writ in the nature thereof." This, however, applies only to civil cases and the complaint on which a warrant in the County Court is issued, is criminal and is not in the class to which the above fee in civil cases has regard. Section 7255 Code of Alabama, 1923, states that the law of fees and costs must be held penal and no fee must be demanded or received except in cases expressly authorized by law.

In 192nd Alabama, page 12, **Copeland vs. Jefferson County**, discussion is had as to the distinction between fees in criminal cases and in civil cases, and it is here made plain that there is a distinction and that each case in reference to fees must be considered under the head to which it belongs.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 29, 1933.

Hon. Walter T. Lane
Tax Collector, Randolph County,
Wedowee, Alabama.

House Bill 56, approved March 1, 1933, merely changes the date of final settlement of Tax Collectors.

Opinion of Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 20, 1933, in which you state:

"As you know, the Legislature recently passed an Act extending the time for the collectors to make final settlement, from July 1st to December 1st.

"Heretofore tax sales have been held about the 1st of June. Will you please advise me if under the recent enactment tax collectors are authorized to postpone or delay the advertisement and sale until such time as they deem proper for getting in their report and settlement before December 1st.

In reply I advise that House Bill 56, approved March 1, 1933, merely changed the date of final settlement of Tax Collectors. The kindred statutes remain unchanged and the Tax Collector should proceed as heretofore. Of course after the case is docketed, the Probate Judge may continue the cause.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 1, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller
CAPITOL.

State finances

Opinion by the Attorney General.

My dear Mr. Hard:

I have your letter of April 24th.

The essential functions of government are the protection of life, liberty and property; the orderly settlement of disputes between the subjects by Courts properly constituted; the suppression of domestic disorders and the repelling of foreign invasions; and also the punishment of crime and punishment for the violation of statutes regulating human conduct. These essentials of government contemplate, first, a Legislature, to make laws for the regulation of the people and the enjoyment of their personal and property rights, in order that we may have a government of laws and not of men. Second, that we have an executive department as defined by the Constitution, with authority to execute the laws and a sufficient number of sheriffs, peace officers and militia to enforce the laws and to carry out the mandates of the laws, and the decrees and judgements of that other primarily essential branch of government, the judiciary.

It also follows that in order that effect may be given to the functioning of the three above mentioned branches of government, the State maintain a system of penal and correctional institutions.

It is apparent that if the payment of the expenses of any of the three departments of government above mentioned are to be postponed, it must be the expenses of the executive department which engages in various activities while ordinarily regarded as necessary, but which in an emergency, must be postponed to more essential functions of the different departments.

Of course the expenses of the legislative department of government must be defrayed out of the general fund of the State. Of course expenses of the judiciary must be defrayed out of the general fund of the State. Of course the expenses incurred on account of the activities of the executive department of the government must be paid out of the general fund, where some other fund has not been provided for this purpose, in order of their importance. Having determined that to have government, we must have a legislature and a judiciary, it is likewise significant that we must have an executive arm of the government. It would be impossible for the three coordinate branches of government, the legislative, executive, and judicial, to function without each other, but it occurs to the writer that in the executive activities, or what are generally considered as executive acts of the government, certain non-essentials may be postponed to the carrying out of the general purpose of our system. In my opinion there must be a chief executive of the State; a revenue collecting agency of the State, and an agency to keep the revenue, and an agency to distribute the revenue. Also there must in conjunction with the effective functioning of the executive, legislative, and judicial branches of government be maintained a system of police regulations, including the State militia, sheriffs and other police officers whose duties are to enforce both the mandates of the Legislature and the orders and decrees of Courts.

Then of necessity the State engages in certain activities which are not prohibited by the Constitution, but naturally flow from an expression of our theory of government as for instance, public health work of the State, and the activities of other institutions which are charged with the care and maintenance of the unfortunates of life, persons mentally deranged, persons afflicted, and persons who come into this life with no control or opportunity to control, their situation in life; our institutions for the insane and our institutions which are maintained for the purpose of giving to such persons as those who are born without sight, hearing or speech, some opportunity; and those institutions to whose care is confided by our Courts the children of our State, under certain circumstances. These things insure to public welfare and in the performance of such functions the State is performing a police power of the highest character. Naturally when persons are involuntarily incarcerated by this state, they must be housed, clothed and fed. Of course persons committed to our penal institutions, corrective institutions and our asylums, are involuntarily incarcerated. Our statutes very wisely provide that these unfortunates who are born without the senses of a normal person shall be committed to an institution such as the institution for the deaf and blind.

The above enumerated functions of our State I conceive to be not gratuitous activities of the State, but the performance of duty which is necessary for the benefit of all of our people.

There are certain other departments of the State government which from the information before me, are charged with the collection of fees and commissions on which such departments operate. It would be unwise to curtail the activities of these departments of government which are performing a service for the people so long as they operate on the fees and commissions collected by them. So long as their services are useful, the collection by these departments of fees and commissions does not affect the financial condition of the State Government, and the State would be very much in its own light if it did not accord to the people these useful services when they do not affect adversely the running of the essential departments of government. Among such departments I might mention, are, the Agricultural Department, the Public Service Commission, the Commission of Game and Fisheries, the State Fire Marshal, the Insurance Department, the State Forestry Commission, and other such agencies of the government. In most instances these departments supply monies for the general fund of the State over and above their running expenses.

What has been said heretofore has been with regard only to the use of the so-called general fund of the State. Several of our departments operate in part or in whole out of funds set aside, either by Act of the Legislature or by provision of our Constitution, from separate funds which are to be used for no other purpose than those of the trust which has been by statute or Constitution, established.

While what has been said heretofore has regarded only the payment out of the general fund of the State, but it must be borne in mind that the Chief Executive, the tax collecting agency and other parts of the executive department, such as the Treasurer, Auditor, Comptroller, Legal Department, and even the Courts and the Legislature are necessary cogs in the administration of all activities of the State government and when funds are used to defray such expenses as the collection of revenue dedicated to a particular purpose, and the administration of the same, there is no diversion of such funds from the purposes specified in the Constitution and by statute. Of course the interest on the legitimate public debt should take preference over the gratuitous functions of government. There are other activities of government that possibly should be mentioned. Also I regard as a necessary activity of the State Government the preservation of the records of the State.

Secondary to those things which we have observed to be necessary to government, might be the State's activity in cataloguing its resources for from this the State is better able to acquire revenue.

I regard, however, the State's activity in education and in road building and maintenance of its port as closely akin to those functions of the State which in the performance of its police powers of government, we have come to regard as a necessity at the present time. These departments of our State Government operate on the funds specifically dedicated by constitutional provision and by Acts of the Legislature. It is to be hoped that the general fund of the State will never become so depleted in defraying the expenses of the essential functions of government as that special funds will ever have to be used for the purpose of defraying a part of the expenses of those other departments of the government, which are necessary cogs in the machine of all activities.

It might be well to observe, however, that an education department, a docks commission, a highway department and an agricultural department, the public service commission, nor any other department or commission of the government can operate without a Governor, a collection agency, an auditor, legal department, and treasurer. Each department of government which operates on a specific trust fund dedicated to a particular purpose should out of such fund defray the expenses of the operation of that department before expecting its expenses to be paid from the general fund of the State. It also might be well to add that the head of each department should determine in the event the expenses of the operation of that department cannot be met in full out of a trust fund or out of the general fund, what is the most essential with a view to continuing and conserving an organization.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 8, 1933.

Hon. Walter K. McAdory, Secretary,
Alabama Pension Commission,
CAPITOL.

Pensions — Distribution of pension warrants or part thereof after death of pensioner.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 4th relative to the proper distribution of pension warrants or parts thereof that were not delivered to the pensioner prior to his death.

You state that due to the financial condition of the State, pension warrants in some instances were not in the hands of the Judges of Probate on the first of each quarter; and in view of Act. No. 145, H. B. 239, approved April 17, 1933, which provides for the issuance of pension warrants in part, only fifty per cent of the amount of the warrants was paid in certain instances with the balance to be paid at a future date.

In short you request my opinion as follows:

1. In instances where the pension warrants were not in the hands of the Judges of Probate on the first of a quarter but later delivered to them, what is the proper distribution of said warrants where the pensioner died between the first day of the quarter and the date warrants were received by the Judges of Probate or before delivery of the warrant to the pensioner?
2. In instances where a partial payment of a warrant is made and the pensioner receives this partial payment but dies before the balance is delivered to him, what disposition should be made of this balance?
3. If the balance due, as referred to in question No. 2, is to be distributed according to Section 2969, Code of Alabama, 1923, would the next quarterly issue or any part thereof likewise be distributed according to Section 2969?

In an opinion of the Attorney General it was held that where a pensioner had died prior to the delivery of a warrant, the distribution of said warrant was governed by Section 2969, Code of Alabama, 1923; and that there was no provision for such a warrant to go to the estate of the deceased.—**Biennial Report of the Attorney General, 1922-24, page 340.**

In answer to your first inquiry, I am of the opinion that distribution should be made according to the provisions of Section 2969, *supra*. Although delivery of the warrant is not made to the Judge of Probate until after the first day of the quarter, nevertheless the warrant was never delivered to the pensioner. Where the warrant is not delivered to the pensioner during his lifetime, the distribution of same is governed by Section 2969, *supra*, there being no right of inheritance relative to pensions.

I am of the opinion that your second inquiry likewise is governed by Section 2969, *supra*. The balance due on the warrant was not delivered to the pensioner during his lifetime and the disposition of same is, therefore, governed by said section.

In answer to your third inquiry, I am of the opinion that so much of the next quarterly issue, together with the balance of that quarterly payment distributed under Section 2969 as to make an amount equal to a full quarterly payment, should also be distributed according to said section if this much be needed. There is to be distributed according to Section 2969 an amount not to exceed the full amount of one quarterly issue. There being a balance of a former quarterly issue already having been distributed under Section 2969, only so much of the next quarterly issue as to make an amount equal to a total quarterly issue may be paid.

The distribution under Section 2969, in my opinion, is governed as of the date of the delivery of the warrant or any part thereof to the legatee thereunder rather than the date of the death of the pensioner or the date the warrant is received by the Judge of Probate. There being no right of inheritance of a pension warrant or any part thereof, same must be delivered to the legatee proper. If a legatee die before receiving all or any part of the quarterly pension, the next legatee in line under Section 2969 will receive the warrant or any part thereof as the case may be.

In order to clarify any other situation that may arise, I might add that in any instance where delivery is not made to the pensioner (or his agent under Section 2959) during his lifetime, the distribution of the warrant or any part thereof is governed by Section 2969, *supra*, as above construed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 10, 1933.

Hon. John Brandon,
State Auditor,
CAPITOL.

Expenses of State Employees when traveling on official business.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 12, 1933, in which you request my opinion as follows:

"Where an employee or official of the State makes a trip out of the State, can that employee or official receive pay for attending shows and entertaining other people by carrying them to dinner, etc.?"

"Shouldn't an expense account be confined to actual traveling expenses and subsistence on the trip?"

The items that you mention above, are not proper charges against the State as expenses. An expense account of a State employee should only include just such items as constitute his actual expenses. Shows, entertaining other people, and carrying them to dinner is an individual matter that he must take care of himself, and the State is in nowise liable for such expenses.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1933.

Hon. J. Z. Mims, Clerk,
Circuit Court, Chilton County,
Clanton, Alabama.

Clerk is entitled to pay for issuing warrants of arrest by virtue of Section 3667, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 1, 1933, in which you request my opinion as to whether or not you are entitled to pay from the State as Clerk of said Court for issuing warrants of arrest in misdemeanor cases.

You are entitled to pay from the State only for such services as are included in Section 3667, Code of Alabama, 1923. You will note this section says, "Where the defendant is sentenced to the penitentiary," but this section is made applicable to misdemeanor cases or hard labor cases where the defendant is turned over to the State, by an Act approved February 18, 1927 (General Acts 1927, p. 52). See Section 3 of said Act. I note among the different items of cost provided for by Section 3667, *supra*, the following item:

"For issuing each *capias* or warrant
(Once), fifty cents."

It is my opinion you are entitled to this.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1933.

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

Poll Tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 24, 1933, in which you request my opinion as follows:

"Sub-Section 7, of Section 3022 of the Code of 1923 exempts from poll tax, all persons permanently disabled whose taxable property does not exceed five hundred dollars. Please render me an opinion as to the following question:

"If a man forty years of age has never paid any poll tax, and if, at that time he can convince the Judge of Probate that he is permanently disabled and that his taxable property is worth less than five hundred dollars, would he be required to pay all poll taxes from the age of twenty-one to the age of forty to become a legal voter, or would the certificate of such Probate Judge as to such disability or taxable property qualify him as a voter without the payment of any back poll taxes, provided, of course he be otherwise qualified?"

It is my opinion that the party will only be exempt from the time he first suffered his permanent disabilities. He would be due poll tax since the adoption of the Constitution of 1901 up to the time he became permanently disabled. Or, in other words, from the time he became twenty one years of age after the adoption of the present Constitution.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools — Issuance of warrants under Section 382, School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 5, 1933 in which you request my opinion as follows:

1. In view of Section 382, School Code of 1927 and the Fletcher-Bonner Budget and Financial Control Act, is it necessary for the Department of Education to have a warrant issued by the State Comptroller on the Rural School House Fund when an application for aid to be paid from this fund is approved?

2. If it is not necessary for a warrant to be issued, will it be legal for the Department of Education to issue a certificate stating that certain amounts of money is being incumbered on the books of that department as a result of the approval of a certain application.

I am of the opinion that your first question should be answered in the negative.

Although Section 382 of the School Code of 1927 provides that warrants are to be issued upon the approval of the application, yet Section 383 provides that such warrants are to be held in trust and shall not be cashed until certain conditions have been fulfilled. Under the Fletcher-Bonner Budget Control Act, warrants are cashable when issued.

In view of the above, I am of the opinion that the proper procedure would be to issue a warrant when same is cashable and not before then. In other words, the warrants should not be issued until the time when same would be cashable under the provisions of Section 383.

Since it is not necessary to issue warrants against any particular fund to incumber same, no prejudice would result from the above procedure. Opinion of the Attorney General to the State Superintendent of Education under date of March 27, 1933.

In answer to your second inquiry, I am of the opinion that it would be legal to issue some form of certificate to the County Treasurer of School Funds stating that a certain amount of money is being incumbered on the books of the Department of Education as a result of the approval of certain applications. This is merely an administrative procedure in which I find no legal objection.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Officers or employes of the State subpoenaed as witnesses not entitled to traveling expenses from appropriations to particular department.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 25, 1933 in which you state the following facts:

In the trial of a criminal case in the Circuit Court of Tallapoosa County, held at Dadeville, the style of the case being: The State of Alabama vs. Ned Cobb et al, a subpoena duces tecum was issued to representative of the Archives and History Department to attend as a witness in behalf of the defense and produce certain documents on file in said Department of Archives and History.

In obedience to said summons, said representative appeared as said witness as stated and now presents a claim against the State for reimbursement for traveling expenses incurred by him in making the trip to Dadeville for the purpose stated.

In view of the above, you request my opinion as to whether or not such claim is a proper charge against the State Treasury to be paid from appropriations to the said Department of Archives and History.

I am of the opinion that your inquiry should be answered in the negative. When a member of a department is subpoenaed as a witness only, he is entitled to the regular per diem and mileage as a witness. In view of this fact, I am of the opinion that said party would not be entitled to additional traveling expenses chargeable to the particular department to which said officer or employee is connected.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1933.

Hon. J. M. Yielding, Treasurer,
Jefferson County,
Birmingham, Ala.

Funds — Transfer of various county funds to the General Fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 29, 1933 in which you state that Jefferson County has accumulated balances in its "Over Plus," "Fiduciary," "Special Witness," and "Redemption" funds, created by monthly deposits of accumulated interest on daily balances in the respective funds. You further state that no claim can be presented for these moneys.

You request my opinion as to whether or not, in view of the fact that no claim can ever be presented for these moneys, can they be transferred to the general fund and if so what is the proper procedure for making the transfer?

I am of the opinion that these moneys can be legally transferred to the "general fund" provided, however, that no claim of any kind or discription can ever be presented for these moneys. The different funds in question are governed by the laws with particular reference thereto concerning the preservation of the integrity of the fund and the transfer to the general fund. But if no claim can ever be presented against these moneys, I see no objection to transferring said funds.

The proper procedure for making the transfer would be to have same entered upon the minutes of the meeting of the county governing body.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 13, 1933.

State Tax Commission
CAPITOL.

Attention: Mr. J. R. Gamble.

News stand defined.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 13th which is as follows:

"Schedule 75 of Section 361 of Acts 1919 levies a license as follows:

"'For each person operating a news stand for the sale of newspapers, magazines and periodicals, five dollars.'

"'The Attorney General, in an opinion by Judge A. A. Evans, under date of March 12, 1925, to the license inspector of Elmore County states in part as follows:

"'In reply will say that, in my opinion, when newspapers only are sold, no license is required under Schedule 75 of Section 361 of Revenue Act 1919.'

"'In view of the above quoted opinion and inasmuch as the word 'and' and not the word 'or' is used, this Commission has instructed the license inspectors that it would take the sale of all three articles mentioned to create liability for news stand license. Are we correct in our opinion?'"

"'In other words, would the sale of magazines and periodicals create the liability for license or would the sale of either one or the other without the sale of the other two articles create a liability for license under Schedule 75, Section 361, Acts 1919?'"

In view of the former opinions to which you refer, it appears that you have properly instructed your agents and that in order to create liability all three articles must be sold or offered for sale.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 15, 1933.

Hon. R. L. Almon,
County Solicitor, Lawrence County,
Moulton, Alabama.

Municipality has no right to authorize the sale or possession of beer containing more than one-half of one per cent alcohol.

Opinion by the Attorney General.

My Dear Mr. Almon.

I have your letter requesting copy of an opinion written by me relative to the possession or sale of 3.2 per cent beer. I have not heretofore written an opinion on this subject in view of the fact that your request which reached me today is the first I have received.

It is perfectly obvious in consideration of Section 89 of the Constitution of 1901 that the ordinance of any municipality in so far as it conflicts with any general statute of this State, can afford no person protection against prosecution for the violation of the general statute.

Prohibited liquors are defined in Section 4615 of the Code of 1923. The Legislature recently authorized the sale of cereal beverages not to exceed one-half of one per cent of alcoholic content. Act No. 54, House Bill 71, passed over the Governors veto October 6, 1932 (Act 1932, page 56).

It follows naturally that I am of the opinion that a municipal corporation may not authorize the sale of beer containing 3.2 per cent of alcohol.

Southern Express Company vs. Mayor & Aldermen of Tuscaloosa,
132 Ala. 326. 31 So. 460.

Hewlett vs. Camp, 115 Ala. 499, 22 So. 137.

Williamson vs. City of Anniston, 215 Ala. 532.

Thornton vs. McDonald, 218 Ala. 100.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 15, 1933.

Hon. J. P. Mitchell,
Judge of Probate,
Abbeville, Henry County, Alabama.

Clerks of Boards of Revenue whose duties are exclusively connected with road service of the county, may have their salaries paid from gasoline tax.

Opinion of Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 13th, 1933, in which you request my opinion as follows:

"The Commissioners Court of Henry County has employed a clerk to do all clerical work connected with said court relating to the roads and bridges of the county and, in the order employing such clerk, it was provided that he be paid a reasonable salary, to be paid from the Road and Bridge Fund of the county, including Gasoline Tax.

"Now, the question has arisen as to whether or not this is a legal charge against the Gasoline Tax of the county, and there has been considerable discussion and confusion among the parties concerned.

"It is therefore requested that you let me have an official opinion as to the legality of this charge against the Gasoline Tax at your earliest possible convenience."

This office has held that the Commissioners Court may employ a clerk whose duties shall be limited to construction, maintenance and improvement of public roads of the County.—Opinion of Attorney General (Office Edition) Book 8, p. 168.

The law provides that gasoline tax which goes to the various counties shall be used **exclusively** for the construction, maintenance and policing of the public roads of the various counties. Therefore, if the clerk is employed to do service in connection and exclusively with the road work of your county, it is my opinion he may be paid from the gasoline tax.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 17, 1933.

Hon. J. F. Hodges,
County Supt. of Education.
Scottsboro, Jackson Co., Alabama.

Schools—Use of district tax for erection of school buildings.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 17, 1933 in which you request my opinion as to whether or not it would be legal to use the three mill district tax for erection of school buildings.

I am of the opinion that your question should be answered in the affirmative provided the tax as voted carried no contradictory provision. This matter is governed by Sections 137, 250 and 289 of the School Code of 1927, which must be strictly followed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 17, 1933.

Hon. J. H. Golden,
Sheriff, Elmore County,
Wetumpka, Alabama.

Sheriff not authorized to hold stolen car for reward where no reward has been offered.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 21, 1933, in which you request my opinion as follows:

"I wish your opinion on the following matter: When a car has been stolen and recovered by a Sheriff or his deputy, can he hold the car for reward when the loser of the car has never offered a reward for the car?"

In reply will state that I know of no law that would authorize the Sheriff on recovering an automobile which had been stolen to hold the same until a reward was paid, where there has been no reward offered for its recovery.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 17, 1933.

Hon. W. H. Holcombe,
Sheriff, Mobile County,
Mobile, Alabama.

Sheriffs not authorized to use automobiles without license tags when individually owned.

Opinion by Assistant Attorney General Moore.

Dear Sir:

In reply to your letter of March 20th with reference to the issuance of free license tags for your use in performing your official duties, I advise that there is no authority for the issuance of free tags except for State and County and municipal owned cars. Therefore, unless the cars you use are owned by the County of Mobile, there is no authority for the issuance of a free tag.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 17, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Authority of County Boards of Education relative to educational policies, dismissing principals and teachers, and decreasing salaries of county superintendents.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 19, 1933 together with letters from Hon. J. S. Brown, County Superintendent of Education of Walker County, in which several inquiries are propounded. In short, they are as follows:

1. Can the County Board of Education set up educational policies without the recommendation of the County Superintendent of Education?

2. Can the County Board of Education set up educational policies contrary to the County Superintendent of Education?

3. Can the County Board of Education rescind an order which confirms the recommendation of the Superintendent for the nomination of the principal of a high school under Section 161 of the School Code of 1927? In other words, can the County Board of Education dismiss a principal or teacher without the recommendation of the Superintendent?

4. Can the County Board of Education decrease the salary of the County Superintendent of Education during the term for which he was elected or appointed?

I am of the opinion that your first and second inquiries should be answered in the affirmative. Section 97 of the School Code of 1927 governs these inquiries. Under said section it is the duty of the County Board of Education to prescribe the educational policies of the county with and on the advice of the Superintendent. A spirit of cooperation between the Board and the Superintendent should prevail. But in the last analysis, the policies are determined by the County Board and the advice of the Superintendent may or may not be taken into consideration.

I am of the opinion that your third inquiry should be answered in the affirmative. Same is governed by Section 117 of the School Code of 1927, which gives the County Board of Education authority to suspend or dismiss, whenever, in the opinion of the Board, the best interest of the school requires it, principals, teachers or other employees or appointees of the Board.

I am of the opinion that your fourth inquiry should be answered in the negative. Section 281 of the Constitution of 1901 provides that the salary, fees, or compensation of any civil officer holding any civil office of profit in this state or any municipality or county thereof, shall not be increased or decreased during the term for which he shall have been elected or appointed. The constitutional provision has been held to be applicable to the office of County Superintendent of Education where said superintendent was appointed or elected by the County Board of Education for a fixed term. **McMurray vs. County Board of Education of Franklin County.** 216 Ala. 144, 112 So. 644.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 17, 1933.

Hon. J. P. Mitchell,
Judge of Probate, Henry County,
Abbeville, Alabama.

Pensions—Disposition of pension warrant on death of pensioner.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 29, 1933 in which you state the following facts:

A pension check was forwarded to your office in the case of one, Joel Tew, deceased. Mr. Tew is survived by a wife and one minor child by adoption. The wife is excluded from the benefits of the pension law, it is not clear what course should be adopted concerning the adopted minor.

You request my opinion as to what rights, if any, a minor child has in the premises.

I am of the opinion that an adopted minor child has no rights whatsoever in this case.

The Statute governing delivery of pension warrants on the death of pensioners is Section 2969, Code of Alabama, 1923 which is as follows:

2969. On death of pensioner delivery of next quarterly payment.—Should a pensioner die leaving a widow who would be entitled to a pension under the provisions of this article or if there be no widow, leaving a minor child or children, or should a widow die leaving a minor child or children, the probate judge shall deliver the warrant of the next quarterly issue, succeeding the death of said pensioner, to the widow, or if there be no widow, to the minor child or children, of such pensioner, and should there be no widow or minor child of such deceased pensioner, the probate judge shall endorse such fact on the pension warrant and collect the same and apply the proceeds, first to the payment of the burial expenses, and second, to the expenses of the last illness of the pensioner, attaching thereto a receipt or statement of payment of such expenses.

In constructing said section this office held that there was no provision for such a warrant to go to the estate of the deceased. **Biennial Report of the Attorney General, 1922-24**, page 349. In other words, the right of inheritance does not attach under this section. The warrant must be delivered in strict compliance herewith.

Although an adopted minor child may have the same rights as a natural legitimate child in regard to inheritance but, as stated above, the right of inheritance does not attach under the statute in question. I am further of the opinion that the word "child" as used in said section refers to a natural legitimate child and none other.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Copy to:
Mr. Walter McAdory,
Pension Commission,
CAPITOL.

May 18, 1933.

Mr. John C. Curry,
State Tax Commission,
CAPITOL.

Only taxpayers may file protest authorized by Section 56, Acts 1923, p. 152.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 3, 1933, in which you state as follows:

"Under the provisions of Section 56, page 182, Acts 1923, taxpayers are authorized to file written objections with the Board of Review protesting the values placed on their property for assessment. This section would indicate that such objections should be prepared and filed by the taxpayer. The question has arisen as to whether or not such written objections could be signed for the taxpayer by an agent or an attorney.

"Please advise us whether or not written objections signed for the taxpayer by an agent or attorney would meet the requirements of the law. We understand that the appearance of the taxpayer in support of the protest may be by agent or attorney, but we do not find any authority for an agent or an attorney to sign the name of the taxpayer to the written protest or to sign the protest as agent or attorney."

In reply I beg to advise that Section 56, Acts 1923, p. 152 (1929 Compilation, Section 186, p. 126) provides in part as follows:

"* * * that any taxpayer who is not satisfied with the valuation of his property as fixed and entered on the return list as required herein, may file objections in writing to such assessed valuations with the secretary of said board, on or before the last Monday in May and the taxpayer shall set out in such objections filed, the description of each item of property and his reason for making objections to the assessed valuation as placed thereon."

This appears to answer your inquiry. The statute provides that "any taxpayer who is not satisfied with the valuations of his property as fixed and entered on the return list as required herein, may file objections in writing to such assessed valuation with the secretary of said board on or before the last Monday in May, and the taxpayer shall set out in such objections filed, the description of each item of property and his reason for making objections to the assessed valuation as placed thereon."

There seems to be no authority for anyone except the taxpayers to make this protest.

The foregoing is emphasized by Section 57 of the same Act, in which it is provided the "property owner, his agent or attorney" may appear at the hearing of the protest.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 27, 1933.

Dr. A. F. Harman,
State Superintendent of Education,
Montgomery, Alabama.

Educational Funds.

Opinion by the Attorney General.

Dear Sir:

I have your letter of April 25th relative to what Educational Funds may be used for the payment of salaries of the officers and employees of the Educational Department.

In my opinion, any fund, whether trust fund or not, dedicated to educational purposes, may be used for the purposes of defraying the expenses of the Educational Department.

I hope the foregoing furnishes you with the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 31, 1933.

Hon. A. F. Harman,
State Superintendent of Education,
Montgomery, Alabama.

Schools—Appropriations by County Board of Education to County Library Boards.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 24th together with a letter from Hon. James S. Brown, County Superintendent of Education of Walker County, from which the following facts appear:

"The County Board of Education set up the Walker County Library with a donation from the County Commissioners and another from the City of Jasper, and with agreement from the Rosenwald people to give dollar for dollar for each dollar that the Board put up for the first two years. The City of Jasper is furnishing the building without cost to the Library but there are no funds coming in from County Commissioners. The Rosenwald Fund gives \$1.00 for \$2.00 for this year. The County Library now has forty-nine (49) branches over the County, many of these located in the school buildings and others in vicinities in reach of schools. The supplementary books are cared for through this Library and are furnished to every elementary school in the County."

In view of the above you request my opinion as to whether or not it is legal for the Walker County Board of Education to appropriate public school funds to the Walker County Library Board.

The answer to your inquiry is governed by Sections 391 and 397 of the School Code of 1927. Section 391 of the School Code provides as follows:

"391. County May Appropriate Funds for School Libraries.—The Commissioners' Court, Board of Revenue or Board of Education in any County is hereby authorized to appropriate not less than ten dollars to any public school under control of the County Board of Education and to any County High School for the purpose of establishing, maintaining, enlarging or improving public libraries in such schools."

Section 297 provides that a County Board of Education may, in lieu of granting separate libraries for each school, establish a system of circulating libraries.

Appropriations by County Boards of Education for libraries must be made in accordance with the provision of these two sections. However, I am of the opinion that the appropriations may be made through the County Library Board provided the money so appropriated be used exclusively in accordance with and for the purpose set out in either of said two sections.—Acts 1927, page 442, Section 20.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 31, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Act No. 138. S. B. 183; salaries of Circuit Solicitors not subject to reduction on May 1st, 1933.

Opinion by Assistant Attorney General Lawson.

Dear sir:

I have your letter of May 24, 1933 which is as follows:

"Act No. 138 approved April 14, 1933, known as the Harrison Substitute Act, fixes the salaries of the Circuit Solicitors and the deputy Circuit Solicitors of the State. Section five (5) of the Act fixes the effective date of the revised salaries.

"The Supreme Court recently handed down a decision in the case of Wilson vs. Swindle in which it was held that Circuit Solicitors were not constitutionally protected against a decrease in the salary during their term of office.

"Due to this decision, it appears to me that the reduction in the salaries of the Circuit Solicitors is effective as of May 1st, 1933.

"A Solicitor differs with this finding and has asked me to request an opinion of you. I therefore, ask you to advise me as follows :

"When is the salary reduction effective as to Circuit Solicitors? As your reply will determine the compensation for the present month, I respectfully request your early attention."

Under the recent decision of the Supreme Court by Mr. Justice Bouldin, there can be no doubt of the fact that the salaries of the Circuit Solicitors can be decreased during their term of office.—**Wilson vs. Swindle.**

Thus, the question presents itself as to whether or not the "Salary Cutting Act of 1933 provides for the reduction of the salaries of the Circuit Solicitors on the first day of May, 1933 (which date is the first day of the month succeeding the approval of the act) or are the Solicitors among that class of officers or employees whose salaries are not affected by said act until the first day of the month next succeeding the ratification of the constitutional amendment known as the Sparks Amendment.

The determination of this question in my opinion is based entirely on the construction to be given Section 5 of the above mentioned act which section is as follows.

"As to all salaries herein provided for officers or employees not elected or appointed for any term of office and which salaries are subject to reduction now, this act shall become effective on and after the first day of the month succeeding the approval of this Act; and as to all other salaries herein, this act shall take effect on the first day of the month next succeeding the ratification of any constitutional amendment removing or suspending constitutional restrictions or limitations upon decreasing or diminishing the salary, fees, or compensation of any officer, officers or employees during the term for which they shall have been elected or appointed."

In view of Section 167 of the 1901 Constitution it cannot be questioned that Circuit Solicitors are officers elected for a term of office and I am, therefore, of the opinion that they are not subject to a reduction in their salaries until after the ratification of the proposed constitutional amendment.

Section 5, supra, to my mind, clearly divides the officers and employees of this State into two separate and distinct classes, namely those who are elected or appointed for a term of office and those who have no term of office. It does not say that the salaries of officers and employees which can be reduced without the passage of a constitutional amendment shall be subject to the reduction on the first day of the month next succeeding the approval of the act. The words, "and which salaries are subject to reduction now," are used in the conjunctive and not in the alternative. If the word "or" had been used instead of the word "and" a different result might have been effected.

I am, therefore, of the opinion that although the salaries of Circuit Solicitors can be reduced during their term of office that Act No. 138, supra, does not include them among those to be affected on May 1, 1933. It is my opinion that if the Legislature had so intended that they would not have made the distinction as it appears in the act, but would have simply used words to the effect that the salaries of those officers and employees which can be reduced without the passage of a constitutional amendment shall be reduced on the first day of the month next succeeding the approval of this act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 31, 1933.

Hon. Oscar Horton,
Judge of Probate Marshall County.
Guntersville, Alabama.

Where mortgage, containing a power of sale on default, is duly transferred by deed so as to convey all the title and interest of the mortgagee

to the transferee, and duly foreclosed on default in payment by the mortgagor, and the transferee becomes the purchaser at the foreclosure sale, the instrument given by the auctioneer to the purchaser at such sale, though in form a deed, is nothing more than a memorandum of sale, and requires no payment of filing tax provided by Section 21½ of Act No. 163, approved July 22, 1927.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of November 22, 1932, was duly received. You ask my opinion as follows:

If a transferee of a mortgage forecloses the mortgage under power of sale contained therein, and becomes the purchaser at the foreclosure sale, does the deed of the auctioneer made to him at the foreclosure sale require a filing tax as provided by Section 21½ of Act No. 163, approved July 22, 1927?

In reply will say that whether or not such a deed requires the payment of the filing tax provided by said Section 21½ depends upon whether or not such instrument conveys any real or personal property within this State, or conveys any interest in such property. If the transfer of the mortgage conveyed the title or interest in the mortgaged property from the mortgagee to the transferee, the sale cut off the equity of redemption, and, what is called the deed of the auctioneer, operated as nothing more than a memorandum sale. Such instrument conveys nothing. The mortgage conveyed the title or interest in the property from the mortgagor to the mortgagee, the deed of transfer, if so drawn, conveys the title or interest of the mortgagee to the transferee; the sale cuts off the equity of redemption and the deed of the auctioneer has no effect other than as a memorandum of sale. Such an instrument does not convey any real or personal property within the State, and, on filing for record, does not require the payment of the filing tax required by Section 21½ of Act No. 163, approved July 22, 1927.

Where the deed of transfer conveys the property or interest in property of the mortgagee to the transferee, the transferee holds the same legal position as the mortgagee. The mortgagee becoming purchaser at his foreclosure of the mortgagee and receiving what is called a deed from the auctioneer, is not required by said Section 21½ to pay a filing tax on presentation for record.

Opinions of Attorney General, 1922-1924. page 230. to Hon. Thos. W. Coleman, Judge of Probate, Calhoun County.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 31, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Depts.,
State Tax Commission,
CAPITOL.

Exemption allowed non-residents by motor vehicle Act of 1923 does not apply to parties who have actually moved and taken up their residence within the State of Alabama.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 8th to which you attach with request for my opinion thereon a letter from Z. T. Morris, License Inspector, Geneva County, in which he states in substance that a party having a Georgia license tag has moved to Alabama and is residing in Alabama, and that the Probate Judge contends that a man has thirty days in which to purchase a license tag after moving from one State to another.

The exemption of non-residents applies only to non-residents, and hence if this party has actually moved his residence to Alabama he ipso facto becomes liable for Alabama license.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 31, 1933.

Hon. J. H. Alldredge,
Chief, Transportation Bureau,
Alabama Public Service Commission,
Montgomery, Alabama.

A carrier who operates a motor truck over the highways of Alabama in the transportation, for hire, of property for the State, a county, or a municipality, and who hauls only for the State, a county or a municipality, and who does not hold himself out to the public as being engaged in the transportation business, is not such a common carrier or contract carrier as is described by Section 1, of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of March 10th has been received. Your letter follows:

"Our attention has been called to the fact that in many instances motor trucks owned by individuals, corporations and partnerships are being used to haul sand, gravel and other freight for the state, county and municipalities. Inquiries have been made to us as to whether such operations come within the purview of the Tidwell Act (H. B. 113).

"In order that this matter may be definitely settled by a construction of the Act, we hereby request your opinion as to whether or not a person, firm, partnership, association, joint stock company, corporation, lessee, trustee or receiver operating motor trucks on the highways of Alabama in the transportation, for hire, of property for and on behalf of the state, a county, or a municipality is subject to the provisions, requirements and terms of the Tidwell Act."

You inquire whether or person, firm, corporation or partnership operating motor trucks on the highways of Alabama in the transportation, for hire, of property for the State, a county or a municipality, is subject to the provisions of the Tidwell Act of 1932—H.B. 113.

The terms "common Carrier" and "Contract Carrier" are defined in Section 1 of the Act. If the carrier described in your inquiry does not fall under the influence of one of the two terms just mentioned, it is my judgement that such a carrier would not come under the influence of the Act. Section 1 defines the term common carrier as "any operator of a motor vehicle who engages in the motor transportation business for hire as a public employment * * *." If such a carrier hauls only for the State, a county or a municipality and does not hold himself out as a carrier for public employment, than I do not think such a carrier is a "common carrier" as is defined in Section 1 of the Act.

Section 1 of the Act defines a "common carrier as "any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public." If the carrier described in your letter does not hold himself out as being engaged in the business of furnishing transportation of persons or property for hire under a special contract or special contracts for the public, then that carrier is not such a contract carrier as is described in the Act. Such a person cannot be a common carrier or a contract carrier, as defined in Section 1, unless that carrier holds himself out to the public as being engaged in the transportation business.

I am, therefore, of the opinion that such a carrier as is described in your letter does not fall under the influence of the Act, and is not affected in any way by the terms of the Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 1, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Depts.,
State Tax Commission,
CAPITOL.

1. Persons delinquent in payment of automobile licenses prior to April 1st should take out license and pay the penalties according to the law then in existence.
2. There is no authority to issue the first half year on horse power basis and the second half year on weight basis.
3. House Bill 107, Acts 1932, held constitutional.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 9, 1933, in which you state:

"House Bill 107, known as the O'Neal Bill, and which provides for issuing private passenger automobile license on weight basis instead of horsepower becomes effective April 1st, 1933, and there are several provisions of this Bill which are not entirely clear to us. We, therefore, request your opinion on the following questions:

"1. There are many delinquents in the State who have been cited and who are legally due to buy nine months or twelve months licenses; many cases pending in the various courts; or persons having executed bond to buy twelve months license. That part of the law authorizing the issuance of tags on a horsepower basis being repealed by the said House Bill 107, how should delinquent licenses be issued on and after April 1st? Should they be issued under the old law on horsepower basis or should the new law govern?

"2. In the case of delinquents, would it be permissible under the new law, which becomes effective April 1st, to issue the license for the half year beginning April 1st and collect for first half of the year on horse power basis and issue escape receipt therefor?

"3. Is, in your opinion, House Bill 107 constitutional in view of the fact that many people have already paid for 1932-33 licenses under the old law which carries a higher rate than the new law, and can a revenue law be charged so as to discriminate against persons who have already paid for license tags and thereby penalize them for their promptness in paying their licenses early during the fiscal license year?"

In answer to question 1, it is my opinion that the delinquents to which you refer should be cited and required to pay license based on the horse power rating.

In answer to question 2, I know of no authority to do as you suggest.

In answer to question 3, I advise that I know of no constitutional objection to the Legislature changing the amount of a license tax required.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 2, 1933.

Hon. J. M. McLeod,
Judge of Probate, Wilcox County,
Camden, Alabama.

Under facts set out corporation held liable for money lenders license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 28, 1933, in which you inquire:

"The Planters Cotton & Cattle Credit Corporation has been organized for the purpose of rediscounting loans for farmers thru the Federal Intermediate Credit Bank. They are incorporated and paying permit, as well as privilege tax and ad valorem tax.

"Please advise whether Schedule 122 (71) Acts 1919, page 282, Section 361, Sch. 70, is applicable to them."

I also have your letter of March 2, 1933, in which you amplify the nature of the business done by the Planters Cotton & Cattle Credit Corporation.

I note that it is a domestic corporation paying permit fee, franchise tax and ad valorem taxes as other domestic corporations. I am of the opinion

that it is liable for license provided by Schedule 70, Acts 1919, Section 361, page 282, appearing as Schedule 122 of the 1929 Revenue Compilation.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 2, 1933.

Hon. Geo. G. Wallace, Jr.,
Tax Collector, Russell County,
Girard, Alabama.

Where property is assessed to joint owners, the payment of part of the taxes assessed against the property by one of the joint owners does not release his interest in the property from the lien for the balance of the taxes assessed against the property even though accepted as part payment by the tax collector.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of April 3rd. You write as follows:

"We have some property which was assessed for 1932 taxes in the names of three persons as Trustees and one person as an individual, the three parties as Trustees owning a one-half interest, and the individual owning the other half. The interest of the respective parties is undivided and the assessment was made without giving a separate valuation to each tract or parcel of land. The assessment covers several distinct parcels. The individual owning a half interest in the property has gone into bankruptcy. The Trustees have offered to pay the taxes and interest on their undivided one-half interest in the property. The Bankruptcy is a resident of South Carolina, and the Trustee in bankruptcy has been ordered by the Court not to pay any taxes at this time and also states that being a Federal Officer he is not chargeable with penalties for the failure to pay taxes when due. Please advise me about the following questions:

"1. Will I be authorized to accept payment of the interest and one-half of the taxes due on the property by the individual or owner who is not in bankruptcy?

"2. If I accept the payment of one-half of the taxes and the interest on that one-half will I be liable on my official bond as Tax Collector for the balance due?"

In reply will say that the property was assessed as an entirety. The payment of half the assessment simply pays half of the assessment. It does not pay the taxes on any special interest in the land and does not release any special interest in the land. All that could properly be given, in such a case, is a receipt for the payment of half the taxes due, leaving the other half a lien on all the land assessed. Of course, if the other half of the taxes was not paid, and the land had to be sold for the other half of the taxes, you should get a decree to sell all the land assessed, described as assessed, and sell so much of it as may be necessary to pay the balance of the taxes due with costs, interest and penalties.

In such a case as stated, you cannot accept payment of half the assessment of taxes and release a half interest in the property assessed. When you sell, in such a case, you sell the entire interest of all the parties against whom the assessment was made.

Every part of the tax is a lien on all the land and you have no right to release any part of this lien until all the taxes assessed against such land are paid.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 2, 1933.

Hon. I. I. Moses, Chairman,
County Commission of Russell County,
Girard, Alabama.

County can purchase land on which is situated a gravel pit where such purchase would result in more economical expenditure for construction and maintenance of roads. Such purchase should be limited to a reasonable amount necessary for the purposes bought.

Excise tax on gasoline funds can also be so used.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have yours of April 29th, in which you make the following inquiry:

"It is necessary from time to time that the County obtain gravel to repair the County roads with. The County has from time to time bought gravel and sand clay mixture for the purpose of maintaining its roads. The County has an opportunity to purchase a small tract of land which happens to be the only soil clay and sand soils in this particular part of

the County for road purposes at a much more reasonable price than by buying it by the load or by the cubic yard. The County Commission would like to know whether or not it can purchase a tract of land for the purpose of removing the sand and gravel from it to be used in the maintenance of the County roads, said purchase to be made with funds derived from the State excise tax on gasoline which is apportioned to the County. Can said lands be purchased out of the Road and Bridge Funds of the County which is derived from a special levy made by the County under the general laws of the State?"

In my opinion if the construction and maintenance of the roads can be more economically accomplished by the purchase of lands on which is situated a gravel pit, that it would be an expenditure within the meaning of the Acts and would authorize the payment of out of the the road and bridge fund.

The same reasoning would apply to the gas tax.

However, such expenditure out of either fund should be limited to a reasonable amount necessary for the purposes of maintenance and construction. The minutes of the Court should affirmatively show that the purpose is the construction and maintenance of public roads of the County and that this purpose can be more economically carried out in this manner. If the purpose is other than construction and maintenance of roads, there is no authority for such action.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 1, 1933.

Hon. G. H. Howard,
Judge of Probate, Elmore County.
Wetumpka, Alabama.

Where mortgage specified payment in bales of cotton rather than money, the mortgage tax should be based on the total number of bales computed at the price at the time such instrument is filed for record.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 24, 1933, in which you state:

"We have had filed with us for record a mortgage in which the amount is specified as so many bales of cotton instead of money. The

due dates of these amounts run over a number of years, a certain number of bales of cotton to be paid each year.

"Please advise us if this mortgage requires a filing tax, and if so, whether or not we must base the value on the present price of cotton."

In answer I advise that in my opinion this mortgage requires a filing tax, and it would appear that the proper amount should be based on the total amount of the indebtedness based on the number of bales of cotton, computed on the price at the time of the recording of the mortgage.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Hon. J. F. Posey,
Judge of Probate, Autauga County,
Prattville, Alabama.

Elections—Compensation of special managers and clerks under absentee ballot law. (Act No. 178, S. B. 27, approved April 19, 1932.)

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 13, 1933 in which you request my opinion as to compensation of special managers and clerks appointed under Act No. 178, S. B. 27, approved April 19, 1932, which act regulates the voting of absentee ballots in this state.

Section 5 of the act in question provides in part as follows:

Section 5. In addition to the managers and clerks now provided under the laws of this state for elections, there shall be, for all future elections, whether primary, general, special, or municipal, appointed at the same time and in the same manner by the appointing board of the county or city, three managers, two clerks, and a returning officer, who shall meet in the office of the Judge of Probate of the county (or, except in the case of municipal elections, in a place to be designated by the appointing board) on the day of said election and remain, as officers at other polling places, for the purpose of receiving the ballots of absentee voters from the Judge of Probate, or other person authorized to handle them, as provided herein.

As there is no specific provision relative to the compensation of the manager and clerks appointed in accordance with the above, I am of the opinion that they are entitled to the same compensation and are paid in the same manner as now provided by law for election managers and clerks in general.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Hon. Geo. E. Ellis,
Road Commissioner Bibb Co.,
Marvel, Alabama.

Act No. 544 approved July 23, 1931, (General Acts 1931) exempted all persons from road duty under 21 years of age.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 10th in which you inquire as follows:

"Bibb County is working under a special road law passed by Legislature and approved September 1919 which requires all male inhabitants age 18 to 25 years, subject to road duty.

"I have been informed that there was a General Act passed by the Legislature in 1928 or 1932 changing age limit to 21 to 45 years. I will thank you to advise me if this General Act changes our Special road law to 21 to 45 years."

In my opinion the effect of Act No. 544 approved July 23, 1931 (General Acts 1931, p. 644) is to exempt all persons under twenty-one years of age. The Act provides in terms who shall be exempt. This construction is emphasized by Section 2, which provides that it shall not repeal any additional exemptions now granted by law. The implication being that it does repeal any additional burdens.

I am, therefore, of the opinion that your local law pro tanto is repealed by the Act of 1931 above referred to.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Hon. L. H. Reynolds,
Judge of Probate, Chilton County.
Clanton, Alabama.

Ex officio fees of sheriffs of the various counties of Alabama.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 10, 1933, in which you request my opinion as follows:

Section 7287 of the Code of 1923 of Alabama relating to the fees allowed the sheriff, provides that, for discharging his duties in relation to the public roads, he is entitled to receive annually, on showing to the Court of County Commissioners that he has discharged his duties, to be paid out of the county treasury, not exceeding \$90.00.

"This Code Section was amended by Act of 1931, page 261 and approved May 27, 1931 in reference to Ex officio service rendered by the sheriff to read as follows:

" 'Impaneling grand juries, advertising and attending all elections in his county, and for all other public services not otherwise provided for, such sums as may be just to be allowed by the county commissioners court, upon presentation of a verified account showing the items of service rendered, to be paid out of the county treasury, not exceeding \$600.00 per annum, etc.' "

"Will you please advise me whether or not the sheriff of Chilton County who was elected in November 1930 and who assumed office in January, 1931, will be entitled to receive fees as provided in the Act approved May 27, 1931?"

It is my opinion that the sheriffs of the various counties of Alabama may receive such payment of ex officio fees under Section 68 of the Constitution of 1901, which is as follows:

"Sec. 68. The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant or employe, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office; nor shall any officer of the state bind the state to the payment of any sum of money but by authority of law; provided this section shall not apply to allowances made by commission-

er's courts or boards of revenue to county officers for ex officio services, nor prevent the legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring, or guarding prisoners."

Of course, six hundred dollars is the maximum amount he can receive. He must be able to furnish a statement of his services and the charges must be reasonable.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Hon. W. B. Paul,
Sheriff, Coffee County,
Elba, Alabama.

Sheriff's duty when serving papers from Justice Court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 3, 1933, in which you request my opinion as follows:

1. Is the Sheriff **required** to execute process of the justice of the peace courts or any other counts, not of record; or is it optional with the Sheriff as to whether or not he shall execute the process of such courts?
2. Is a Sheriff required to execute writs of possession from justice of the peace courts in forcible entry and unlawful detainable proceedings?

Answering your first inquiry my answer is in the negative. You will note that Section 10199, Code of Alabama, 1923, says the Sheriff may perform the duties of the Constable, etc. This is true but he does not have to. However, when he accepts papers for the Justice Court he is duty bound to serve them with due diligence.

My answer to your second inquiry is in the negative.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools — Admission of children under six years of age on July 1st.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 5, 1933, together with other correspondence, in which you request my opinion as to whether or not Act No. 272, Senate Bill No. 179, approved November 8, 1932, is applicable to schools wherein promotion of pupils is on a semi-annual basis. In other words, will this Act prevent cities on the semi-annual promotion plan from taking children at the middle of the year who became six years of age after July 1st.

I am of the opinion that your inquiry should be answered in the affirmative. The Act in question provides as follows:

"Section 1. That no child who is under 6 years of age on July 1st of any year shall be admitted to school during that school year. Provided that this Act shall not apply to children entering school during the year 1932."

The "school year" as used in said Act, in my opinion, refers to the whole school year and not to a semester thereof regardless of whether the promotion is annual or semi-annual.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools — Bonds of city superintendents of schools and city treasurers of school funds.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 9, 1933, in which you request my opinion as to whether or not in view of Act 19, H. B. 183, approved March 8, 1933, it will be necessary for you to follow the provisions of Section 197 of the School Code of 1927, relative to the bonds of city superintendents of schools and city treasurers.

I am of the opinion that your inquiry should be answered in the affirmative.

Act 19, H. B. 183, approved March 8, 1933, it entitled: "An Act to amend Section 197 of the 1927 School Code of Alabama."

When a section of the Code is sought to be amended by reference to its title, the subject added by way of amendment must be germane to, suggested by, and supplemental to subject matter of the original section. - McCord vs. Bridges, 211 Ala. 296, 100 So. 469.

Section 197 of the School Code provides for the making and approval of a bond for the City Superintendent of Schools and the City Treasurer, and further provides for certified copies of the bonds to be placed on file in the office of the State Department of Education.

Act 19, H. B. 183, approved March 8, 1933, which attempted to amend said Section 197, provides for the designation of a depository by the City Board of Education.

Said Act 19, H. B. 183, *supra*, is not, in my opinion, germane to, suggested by, or supplemental to the subject matter of Section 197 of the School Code. Therefore, in my opinion said Act 19, H. B. 183, *supra*, is unconstitutional and void.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 5, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Depts.,
State Tax Commission,
CAPITOL.

The exemption afforded counties and municipalities from the tag tax applies only to vehicles owned and used by them.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 8, 1933, in which you attach letter from Z. T. Morris, License Inspector of Geneva County, in which he states:

"The County is now using, is hiring a bunch of cars and trucks. These motor vehicles are private property, all belonging to individuals and to the County is hiring these vehicles and paying for the use of same and I wish to know if they are exempt from a license tag."

You request me to advise you as to Mr. Morris' inquiry.

In reply I beg to advise that Section 22, Acts 1923, page 284, provides in part as follows:

"Nothing herein contained shall be construed so as to impose a license tax on motor vehicles **owned and used** by any municipal corporation or county in this State."

It, therefore, appears that to afford the exemption the motor vehicles must be owned by the County as well as used by it.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 6, 1933.

Hon. H. E. Kendrick,
Tax Collector, Dallas County,
Selma, Alabama.

When Tax Collector unable to make service, as provided by Section 252, 1929 Revenue Compilation, and is unable to make service by registered mail service should be perfected as provided in Section 253, 1929 Revenue Compilation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

You request in your letter of May 5, 1933, the following:

"In case where tax collector is unable to make delivery of notices as prescribed in Section 252 of the Revenue Code of 1929, and is unable to make delivery by registered mail at property owners last known address, what course must the tax collector take in order that decree

for advertising and sale of property will be valid? Please give me your opinion."

In reply I beg to advise that in my opinion you should be governed as provided by Section 244, Acts 1919, p. 282 (Section 253, 1929 Compilation). Your record should show inability to make service as provided by Section 252, 1929 Revenue Compilation.

King v. Hill, 172 Ala. p. 4.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 6, 1933.

Hon. Henry K. Dickinson,
Deputy Solicitor, Lee County,
Opelika, Alabama.

1. By Section 52 of the Constitution of Alabama "a majority of each House shall constitute a quorum to do business." "House" here means: those elected to each House.

2. By section 76 of the Constitution it is provided: "When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling the session, except by a vote of two-thirds of each House."

Here "House" means those present and participating as shown by the vote on the final passage of a bill. Provided the number present and participating constitute a quorum.

3. If the final vote on a bill shows that a quorum of each House was present and participating, and that a vote of two-thirds of those present and participating in each House voted for the bill, that is sufficient to satisfy the requirement in Section 76 of the Constitution: "Except by a vote of two-thirds of each House."

4. Word "House" has a different significance in each of the two Sections.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of February 16, 1933. You ask my opinion as to the validity of Act No. 153, approved October 28, 1932. You state:

"The House and Senate Journals show that at the morning roll call there were present in the House 103 and in the Senate 35. The vote on this bill was, in the House, yeas 61, nays none; in the Senate yeas, 20, nays, none. This bill was among those measures passed by the Legislature which were not included in the Governor's proclamation or call; hence under Section 76 of the Constitution requires a two thirds majority.

"The question raised by the Bond Attorneys is whether or not our Constitution requires two-thirds of those present when the vote is taken or two-thirds of those answering the roll call."

In reply will say that the words "by a vote of two-thirds of each House" as used in Section 76 of the Constitution of Alabama, means two-thirds of those present and participating in the final passage of such Act; provided there is present and participating in the final passage of such Act a quorum of each House. There is no difference, so far as the Constitution of the State of Alabama is concerned, in the manner or requirements for the final passage of an act at a special session of the Legislature, whether included in the Governor's proclamation or call, or not included in the Governor's proclamation, except that where included in the proclamation or call it is governed by Section 63 of the Constitution, and where not included in the call, it is governed by Section 63 of the Constitution as modified by Section 76 of the Constitution. The only modification of Section 63 by Section 76 is the requirement of a vote of two-thirds of each House, instead of a majority of each House, "upon subjects other than those designated in the proclamation of the Governor calling such session."

"The word, 'House' is used in the Constitution in varying senses and refers to three entities; the place of legislative session; the total elected membership of the one or other branch of that Department; and the body, whether upper or lower, as legally constituted to perform the legislative function."

State ex rel Meyer vs. Greene, Judge of Probate, 154 Ala. 250.

The meaning of the word "House" in Section 76 of the Constitution where it is said "except by a vote of two-thirds of each House," is the body, whether upper or lower, as legally constituted to perform the legislative function.

The State ex rel Meyer vs. Greene, Judge of Probate; Farmers Union Warehouse Co. vs. McIntosh, 1 Ala. App. 407.

The word "House" in Section 52 of the Constitution where it is said: "A majority of each House shall constitute a quorum to do business," means the total elected membership of each of such departments.

When the Journal of the House and the Journal of the Senate each show by the record of the aye and nay votes that a quorum was present and participated in the passage of the Act, and that two-thirds of those participating voted aye, that is sufficient to satisfy Section 76 of the Constitution. - *Farmers Union Warehouse Co. vs. McIntosh*, supra.

In the above cited case, the Court, after citing with approval several cases from other states, has this to say:

"The Constitution of this State contains within itself evidence that its makers, in using such expressions as the one now under consideration, tacitly recognized the rule of construction stated in the authorities above cited. The provision (Constitution, Section 52) that 'a majority of each House shall constitute a quorum to do business,' is to be given such effect, certainly for the ordinary purposes of legislation, that, on a question whether there has been a compliance by either House with a requirement of the Constitution relating to its legislative action, the majority of such House present **at the time** is to be regarded as the body referred to as one of the branches of the Legislature; in other words, when the Constitution refers to either House of the Legislature, it means **no more than a majority of the members of such House present and taking part in its action.**"

Section 63 of the Constitution requires for the final passage of a bill, in either House, that "the vote be taken by yeas and nays, the names of the members voting for and against the same be entered upon the Journals, and a majority of each House be recorded thereon as voting in its favor, except as otherwise provided in this Constitution." Section 76 of the Constitution otherwise provides only to the following extent:

"When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, except by a vote of two-thirds of each house."

It will be seen that the modification made in Section 63 of the Constitution by Section 76 is that a vote of two-thirds of each House is required in the instance named in Section 76 instead of a majority of each House in other cases.

The requirements in Section 63 that "every bill shall be read on three different days in each House, and no bill shall become a law, unless on its final passage it be read at length, and the vote taken by yeas and nays, the names of the members voting for and against the same be entered upon the Journals," apply to the matter mentioned in Section 76 as well as to any other act of the Legislature. There is no provision in the Constitution of Alabama for recording the number present in either House when a vote is taken on the final passage of an Act except the yeas and nays voted and the names of the members voting for and against the bill. When these mat-

ters are shown by the Journal of each House, and such record shows that a quorum was present and participating and that two thirds of those participating voted for the bill, that is sufficient to satisfy Section 76 of the Constitution.

Section 63 of the Constitution of Alabama, 1901, is the same as was Section 21 of the Constitution of Alabama, 1875. Said Section being re-adopted in the Constitution of 1901, it is conclusively presumed that it was adopted with the same meaning that the Supreme Court of Alabama had given it in the Constitution of 1875.

In the case of the State *ex rel* Attorney General vs. Buckley, 54 Ala. 599, the Supreme Court of Alabama had said of said Section 21 of the Constitution of Alabama, 1875:

"No intendment can be indulged that the constitutional requirement as to the taking of the yeas and nays, in the passage of bills, has been complied with; this must affirmatively appear from the Journals, which in this case import absolute verity, and if they are silent, no other evidence can be received, and the Act has no constitutional existence. It will be presumed, however, that the other requirements of Sections . . . 21 . . . of Article IV of the Constitution have been complied with, unless the contrary be shown."

The yea and nay vote in said Act No. 153, approved October 28, 1932, shows that a quorum was present on its final passage in each House, and that it received in its favor a two-thirds vote in each House.

There is nothing in the Journal of either House to show the contrary. Every Act of the Legislature is presumed to be constitutional until the contrary is shown beyond a reasonable doubt.—*Zeigler vs. South & North Ala. R. R.*, 58 Ala. 594; *Vandiver vs. Burke*, 175 Ala. 561.

There can be no question that said bill No. 153 is constitutional so far as the objection stated is concerned.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 20, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Counties — Payment of premium for retirement of bonds before maturity.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 6, 1933 in which you present the following facts:

On March 1, 1901 Winston County floated a bond issue of \$30,000 maturing Mar. 1, 1933.

On December 1, 1925 the County returned \$18,000 paying a premium of \$1,270 and on March 1, 1928 returned the balance of the issue \$12,000 paying a premium of \$521.03. This evidently was done in order to float a new issue at a reduced rate of interest. The whole transaction amounted to a saving to the County of \$6,308.97 as shown by attached exhibit.

In view of the above you request my opinion as to whether or not the transaction was legal in that a premium was paid for the retirement of the bonds before maturity. You further inquire as to the liability of the bond of the Judge of Probate for drawing the warrants for the premiums in question under Section 321, Code of Alabama, 1923.

As a general rule a premium cannot be paid for bonds in order to retire them before maturity. - **Biennial Report Attorney General, 1924-26, page 305.** But if good business dealings, as in the instant case, will and does allow a saving to the county, I am of the opinion that same may be done legally. Such a transaction would be an exception to the general rule.

In view of the above answers to your first inquiry, the answer to your second inquiry is, of course, in the negative.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Elections — Publication of notices under Act No. 59, H. B. 308, approved March 10, 1933.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter in which you state the following facts:

Under Act of the Legislature approved August 20, 1927, page 276, section 393 of the Code, a number of notices are required to be served by the sheriff five days before second Monday in February, and in addition to said notice the registrars are required to give notice by publication by one insertion in some newspaper published in the county.

An Act of the Legislature approved March 10, 1933, provided for an additional term of thirty days each year, beginning the third Monday in April 1933 to purge the voting list. Said last Act provides for payment of registrars, but does not authorize or require notice by publication. Under Section 386, the State is authorized to pay only for such notices as the Registrars are required by law to make.

You request my opinion as follows:

In the absence of any provision in the Act of March 10, 1933, requiring any notice to be given is there any authority of law to pay from the State Treasury for any publication made under said Act?

I am of the opinion that your inquiry should be answered in the negative.

Section 386, Code of Alabama, 1923 authorized the State to pay only such notices as the Registrars are **required by law** to make. The act in question does not **require or even authorize** any notice for the special sittings therein specified, said special sittings merely being in addition to all others now allowed by law, and affects only counties of not less than 100,000 and not more than 300,000 population.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 21, 1933.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Acts of Legislature — Printing and binding of General and Local Acts.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 17, 1933 in which you request my opinion as to whether or not the General and Local Acts of the Special Session of

the 1933 Legislature may be bound in a single volume in view of Sections 2918 and 2920 of the Code of Alabama, 1923 which provides for the printing and binding of 4,000 copies of the General Acts and 2,000 copies of the Local Acts. You state that the Local Acts will contain approximately thirty pages and that the separate binding thereof will be impractical.

I am of the opinion that your inquiry should be answered in the affirmative, provided that the binding of the General and Local Acts in question in a single volume is the most practical and economical method of handling the matter.

The fact that Sections 2918 and 2920 of the Code of Alabama, 1923 provide for 4,000 copies of the General Acts and only 2,000 copies of the Local Acts does not, in my opinion, prevent the binding of both acts in a single volume if the minimum required number of each acts are available for distribution, and if this be the most practical and economical method of accomplishing the purpose to be effected.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. G. W. Mitchell,
Sheriff, Lauderdale County,
Florence, Alabama.

Sheriffs are entitled to \$4.00 for executing writ of arrest.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 13, 1933, in which you request my opinion as follows:

"The following is a copy of a letter from the Auditor to me concerning fees due me. Will you please give me an opinion on whether or not I am entitled to the fees mentioned in his letter as follows:

"Under the Fletcher Bill it becomes the duty of the State Auditor to audit all vouchers for claims paid by the State Comptroller. I desire to call your attention to Case No. 7598, State vs. Delmer Murphy, Lee Fisher and Earl Davis, who was convicted and sentenced on Oct. 1st, 1932, charged with Grand Larceny, it appears that these parties were jointly indicted, but in making up the cost bill to the State, the clerk only allowed for one arrest (\$4.00). It is the opinion of this of-

face that you should be entitled to \$4.00 for each arrest, and that the amount should have been \$12.00 instead of \$4.00 as set out in the cost bill. The cost bill shows that the Clerk issued three copies, one for each defendant, however, the Convict Department only allowed him for issuance of one capias.

"I would suggest that you get an opinion from the Attorney General on this matter, so that in future you will be able to get the proper fees, should we be correct in our opinion."

It is my opinion the Auditor is correct in his construction of the law. You are entitled to the \$4.00 for each arrest, that is for each defendant. You will note that Section 3741, Code of Alabama, 1923, sets out the fees to which the sheriff is entitled, and among these items is costs here set out, we find the following: "For executing warrant or writ of arrest in felony cases . . . \$4.00."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. T. M. Bailey,
Clerk, Circuit Court.
Cullman, Alabama.

Judges are without authority to suspend sentence and grant probation for costs in a criminal case.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 3, 1933, in which you request my opinion as follows:

"Where a defendant is convicted and sentenced to the penitentiary for a period of years or months as the case may be, and the judge suspend the sentence and the defendant is not required to go and serve same; does the cost in the case become a charge against the fine and forfeiture fund after an execution has been returned by the Sheriff 'no property found'?"

This office has repeatedly held, and we feel sure that it is the law, that a Circuit Judge or a Judge of a County Court is without authority to suspend a sentence or grant probation for costs. He can only suspend sentence and place defendant on probation so far as fine or hard labor or penitentiary sentence is imposed, but is without authority to suspend and place de-

fendant on probation so far as the costs are concerned. The cost does not belong to the State or County, but belongs to the officers and witnesses of the Court.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. J. M. McLeod,
Judge of Probate, Wilcox County,
Camden, Alabama.

In order for a member of the Court of County Commissioners of Wilcox County to obtain pay for the discharge of his duties in letting out, inspecting and accepting, building, or repairing of any county bridge, or county building or works, or mileage in going to and from, such commissioner must have been acting under the authority of an order of the Commissioners Court previously made for him, designating the work to be done.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 10th was duly received. You write as follows:

If the Court of County Commissioners puts an order on their minutes allowing any member of said Court to receive \$3.00 per day and mileage for road duties, can said Court allow claims for such services and mileage, and can I legally draw a warrant for claims so allowed?

In reply, will say that in my opinion such an entry on the minutes of the Court of County Commissioners would not authorize the allowance of claims for road duties. This allowance to members of the Court of County Commissioners, for services performed in your county in letting out, inspecting and accepting, building, or repairing of any county bridge or county building or works, is now governed by Act No. 669, approved July 31, 1931 (Acts 1931, page 805).

In my opinion such an order on the minutes of the Court of County Commissioners is entirely too general. The order must be made for each member and the particular work to be done by him designated in the order. One sentence of said Act reads as follows:

No allowance shall be made to any commissioner for per diem or mileage for inspecting roads, bridges, etc. except when acting under authority of an order of the Commissioners' Court previously made.

There is no provision of emergencies in the sentence following the above quoted sentence in said Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. Henry N. Hughes, Chairman,
Montgomery Co. Democratic Executive Com.
Montgomery, Alabama.

Elections — Last day on which absentee ballots may be issued by Judges of Probate.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of recent date in which you request my opinion as to the last day absentee ballots can be issued by Judges of Probate for both general and primary elections.

The answer to your inquiry is governed by Section 408, Code of Alabama, 1923 as regards general elections and Section 680, Code of Alabama, 1923 in primary elections. The language of both sections is substantially the same in respect to the time when ballots may be furnished absentee voters by the Judges of Probate. The time set out in both sections is, "not more than thirty days nor less than five days," before the election in question.

In computing said time the thirty or five days should be figured from the date of the election. In other words, if the election is held on a Tuesday (which is usually the case) five days before the election day would, in my opinion, be the preceding Thursday. Therefore, the last day absentee ballots may be issued by Judges of Probate would be the Thursday preceding the Tuesday on which the election is held.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. A. N. Barrentine,
Sheriff, Walker County,
Jasper, Alabama.

Sheriffs must be paid their ex officio fees and road service in accordance with the provisions of the law.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 1, 1933 in which you request my opinion as follows:

The Board of Commissioners for the last several years has been paying the ex officio fees and road service monthly, although the law directs that it shall be paid quarterly, and since we have a new chairman of the board in this county, he has raised the question of the legality of paying it monthly.

He asked me to write and get an opinion from you as to whether he as chairman could be held liable for paying this monthly. He is willing to do this as he says it will amount to the same thing in the long run.

It would be an accommodation to me to get this amount monthly, as my fees do not amount to any great amount and this would help me to take care of my expenses each month.

The law directs that this service be paid for quarterly. I know of no authority of law to pay it otherwise.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools — Distribution of Teacher Training Equalization Fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 9, 1933 in which you state the following facts:

It will be noted in Subsection 7 of Section 4, Act No. 292, approved November 9, 1932, that in addition to the maintenance appropriation of \$10,000 made to the Daphne State Normal School that \$18,000 of the Teacher Training Equalization Fund shall be available in the event the funds appropriated to said school for additional grounds and equipment shall be released. This institution has not complied with the requirements necessary in order for these appropriations for capital outlay to be available for expenditure.

In order to make a distribution of the amount that has now accrued to the credit of the Teacher Training Equalization Fund, you request my opinion as to whether it will be necessary for any part of the Teacher Training Equalization Fund as provided for in Subsection 6 of Section 4, Act No. 292, approved November 9, 1932, to be set up and retained for the Daphne State Normal School.

I am of the opinion that it will be necessary to set aside the appropriations to the Daphne State Normal School out of the Teachers Training Equalization Fund for capital outlay until the end of the fiscal year. The appropriation in question is an annual fiscal year appropriation. There being no definite time in which to qualify for said appropriation, therefore, the qualifications may be met any time within the fiscal year.

However, from a practical standpoint, if the qualifications **cannot and will not** be met before the end of the fiscal year, I see no objection to making the distribution at this time.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. K. J. White,
Clerk and Register of Circuit Court,
Ashland, Clay County, Alabama.

Clerks are entitled to pay for making final record in criminal cases as provided under Section 3667, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 31, 1933, in which you request my opinion as follows:

"The above defendant was convicted in the County Court of Clay County for violating the prohibition law and took an appeal to the Circuit Court of Clay County. He was convicted in the last named court and sentenced to hard labor for the fine and costs.

"In making up the cost bill, I charged 75c for final record in the Circuit Court. Mr. Wm. F. Feagin deducted this from my cost bill and states that he does not think it a proper charge."

The State only pays such costs as are listed under Section 3667, Code of Alabama, 1923. This as it appears in the statute is limited to penitentiary cases, however, it is made applicable to hard labor cases by an Act approved February 18, 1927, Section 3 (General Acts 1927, p. 52). I find in Section 3667, supra, the following item of cost: "Making final record (per hundred words), fifteen cents." Therefore, I am of the opinion you are entitled to this. I do not know how you arrive at your charge of seventy-five cents. The opinion you refer to of May 1st, 1931, does not apply as it does not decide the question herein involved.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1933.

Hon. Landon C. Smith,
State Highway Director,
CAPITOL.

Highways — Disposition of fines for violations of Act No. 159, H. B. 113, approved October 28, 1932 (Acts 1932, page 178).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 8, 1933 in which you request my opinion as to the proper distribution of fines collected for violations of the provisions of Act No. 159, H. B. 113, approved October 20, 1932 (Acts 1932, page 178).

I am of the opinion that said fines are to be remitted to the State Treasurer within thirty days after their receipt and placed to the credit of the

"Motor Carrier Fund" under Section 39 of the Act in question and distributed according to the provisions of said section.

Section 39 provides in part as follows:

Section 39. Except as provided in the preceding section, all excise mileage taxes, fees, and all other amounts collected under this Act shall be paid into the State Treasury within 30 days after their receipt and shall be kept separate and apart from all other funds by the State Treasurer, in a fund to be known as the "Motor Carrier Fund," which fund shall be used as follows:

"All other amounts collected under this act," as used in said section is, in my opinion, sufficiently broad to cover fines collected for violations of its provisions.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 26, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile License Depts.,
State Tax Commission,
CAPITOL.

In determining the license tax on motor vehicles under the provisions of House Bill 107 by O'Neal approved October 10, 1932, Acts 1932, page 87, the factory shipping weight should be used.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 1, 1933, in which you state:

"House Bill 107 (O'Neal) approved October 10, 1932, provides in part as follows:

"Such license shall be based on the avoirdupois weight of the automobile provided, however, that where any automobile was manufactured in and weighed at the factory, the factory shipping weight shall be used in determining the license tag or registration fee to be charged.—"

"We have had several inquiries from Probate Judges as to how weight should be figured in issuing license tags where the weight has

been materially changed by changes in body construction or other changes, since leaving the factory.

"For example, one Probate Judge writes that he has an application for license for a private passenger car, the seating capacity, and therefore the weight of which, has been greatly increased by a change of bodies. The question arises as to whether he should issue a license on the actual weight of the converted car or on the manufacturer's shipping weight as given in his Reference Manual?

"We are also in receipt, today, of an inquiry from another Probate Judge who states that the car in question has been damaged by fire to the extent that the original body had to be removed and a new one substituted therefor. The weight of the car in this instance has been greatly reduced. He wants to know if he should require the owner to buy tag on the manufacturer's shipping weight or whether he should require the owner to buy a tag on the actual weight of the car as it now stands."

In my opinion the license should be charged as the statute provides on the factory shipping weight.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 26, 1933.

Hon. Grover C. Hall,
Judge of Probate,
Montgomery, Alabama.

Tabulation of absentee ballots under Section 5 of an Act approved April 19, 1933, H. B. 27.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 23, 1933, in which you request my opinion as follows:

"Under Senate Bill No. 27, Acts No. 178, passed at the Special Session of the Legislature of 1933, Section 5 of the said Acts require that the absentee ballots cast as provided by law shall be, by said election officers tabulated separately by precincts and returns thereof made as now provided by the laws governing the conduct of elections.

"After the absentee votes have been tabulated in making the returns must the absentee election officers make a separate certificate of result

for each precinct, or will one certificate of result of the total absentee votes cast in all the precincts be sufficient?"

It is my opinion the managers appointed to tabulate the absentee ballots of the various precincts of Alabama under Section 5 of an Act approved April 19, 1933, S. B. 27, must tabulate the votes by precincts, but they are not, in my opinion, required to make a separate certificate as to the votes cast in each precinct.

In other words, the certificates should be so written as to include the entire tabulation in one.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission,
CAPITOL.

Privately owned motor vehicle hauling United States mail exclusively not liable for license tag.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 6th in which you inquire:

"In your opinion are privately owned motor vehicles hauling United States mail exclusively, by contract of owner, liable for motor vehicle license and ad valorem taxes?"

In reply I beg to advise that if the motor vehicle is used exclusively for the carrying of the United States mail, I am of the opinion that it is not liable for the license tax. Presumably it would be liable for ad valorem taxes if the property is actually owned by an individual.

Of course if the motor vehicle is used for any other purpose it would be liable for both taxes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1933

Hon. W. E. Matthews.

Tax Assessor,

Wedowee, Randolph County, Alabama.

Where property is improperly assessed such assessment should be voided and the property should be assessed in the name of the owner.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 26th in which you state:

"On May 19, 1930 one Mr. Isaac Joiner let his land sell for tax and it was bought by one Mr. C. S. Prescott. In the fall of 1930 Mr. Prescott listed the land in the name of Issac Joiner and paid same in the fall of 1931 Mr. Prescott listed the land again in the name of Isaac Joiner. On May 21, 1932, before the last assessment was due Mr. Prescott was given a deed to this land by the Probate Judge, the time for redemption being out.

"The assessment for the year 1932 has not been paid and the tax collector will have to advertise and sell it again it seems. Is the assessment in the name of Isaac Joiner legal or should it have been in the name of C. S. Prescott?

"Please reply as early as possible so that if the assessment is illegal I may reassess it in the name of C. S. Prescott as an escape before the tax collector issues his delinquent notices."

In reply I beg to advise that apparently this property has never been assessed properly and the assessment as made is void.

It is therefore my opinion that the present purported assessment should be voided and an escape assessment in the name of the real owner should be made.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Legislature acts constitutionally in reducing the per diem of registrars from \$7.50 to \$5.00; the Legislature may increase or reduce such per diem at any time.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of April 20th has been received. Your letter reads as follows:

"Please refer to Sections 370, 371 and 373 of the Code and in that regard to Section 190 of the Constitution, and also to an Act of the Legislature, approved February 22, 1933, a copy of which is herewith enclosed, and advise whether the per diem allowed registrars as provided in the Act mentioned is the compensation to be paid to registrars for daily official services rendered, subsequent to date of approval of said Act.

"A registrar of one of the counties of the State contends that the reduction of per diem compensation cannot be made to apply to him during the term for which he was appointed."

I have examined Section 370, 371 and 373 of the Code of Alabama of 1923. Section 190 of the Constitution of Alabama of 1901, and an Act of the Legislature of Alabama approved February 22, 1933 have also been examined.

The contention of the Registrar mentioned in your letter is noted. Section 371 of the Code of Alabama, 1923 provides:

"The registrars so appointed under this article may be removed at the will of the appointing board, or a majority of the members thereof, at any time, with or without cause, without giving their reasons therefor; and if not so removed, the registrars may hold office for four years from the time of their appointment and until their successors are appointed."

It will be noticed that registrars are appointed and that they may be removed at the will of the appointing board, or a majority thereof, with or without notice and without giving any reasons therefor.

It is my judgement that the Legislature may change the per diem of registrars at any time the Legislature sees fit so to do. The Act approved February 22, 1933, reduces the per diem of the registrars from \$7.50 per day to \$5.00. I see nothing in Section 190 of the Constitution which prevents the Legislature from reducing the per diem of registrars. It is my judgement that you should follow the Act of February 22, 1933 and pay the registrars \$5.00 per day instead of \$7.50.

Yours very truly,
THOMAS E. KNIGHT, JR.
Attorney General.

July 3, 1933.

Hon. George W. Hulms,
County Superintendent of Education,
Fort Payne, DeKalb County, Alabama.

Schools—Employment of clerk under Section 169, School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 14, 1933 in which you request my opinion as to whether or not the County Board of Education can put a statistical and stenographic clerk into your office under Section 169, School Code of 1927, without your nomination, should they fail to approve your nomination.

I am of the opinion that your inquiry should be answered in the negative.

Section 169 of the School of 1927, insofar as it is pertinent to your inquiry, provides as follows:

"The County Board of Education may in its discretion provide upon the nomination of the County Superintendent, at least the following assistants: an elementary school supervisor and a statistical and stenographic clerk.* * * * *

Although it is in the discretion of the County Board of Education to provide the clerk in question, yet if they do so it must be done upon the nomination of the County Superintendent of Education. The nomination of the County Superintendent, in my opinion, is a condition precedent to the employment of the statistical and stenographic clerk under said section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 6, 1933.

Hon. J. G. Cuninghame,
Judge of Probate, Clarke County,
Grove Hill, Alabama.

Claims for medicine and medical service for the almshouse and prisoners in jail are preferred claims.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 26, 1933, in which you request my opinion as follows.

"Please advise me if in your opinion a bill for drugs furnished poorhouse and jail would be preferred claim.

"Also if the services of a physician employed by the Board of Commissioners, at so much per month to treat prisoners and paupers at jail and poorhouse, would be a preferred claim.

"This question has come up with our board of commissioners and we will be glad to have your opinion on these two matters.

In answer to your inquiry as to claims for medicine and medical service for inmates of the almshouse, I call your attention to Section 231, subsection 5, Code of Alabama, 1923. The Section above referred to, sets out what claims are preferred claims against the County, and the subsection, referred to above, is as follows: "Claims for the support of the poor." Therefore it is my opinion the above quoted Section makes this claim a preferred claim. It is also my opinion such claims for prisoners confined in jail are preferred claims under the same provision. I call your attention to Section 4808, Code of Alabama, 1923, which is as follows:

"4808. Necessary clothing, medicines, etc., to insolvent prisoners.—Necessary clothing and bedding must be furnished by the sheriff or jailer, at the expense of the county, to those prisoners who are unable to provide them for themselves; and also necessary medicines and medical attention to those who are sick, when they are unable to provide them for themselves."

You will note this Section says along with other things: "* * * to those prisoners who are unable to provide them for themselves; and also necessary medicines and medical attention to those who are sick. * * *" I construe this to come under Section 231, subsection 5, supra: "Claims for the support of the poor." If the claim we have under consideration is not a claim for the support of the poor, I do not know what to call it. Therefore, it is my opinion that both of your inquiries should be answered in the affirmative.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 10, 1933.

Hon. C. S. Culver,
Gadsden, Alabama.

Act No. 72, H. B. 361, Carmichael, approved March 18, 1933.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date which is as follows:

"I am interested in a private fish pond here and, to my surprise, I was told today that my pond had been converted into a public pond, said conversion taking place in the passage of the Carmichael bill during the last Special Session.

"The pond in question parallels the railroad right of way for a short distance but otherwise the pond is entirely on private property. Is it true that under these conditions the public has a right to the use of my pond without the permission of the owner? Your opinion in this matter will be very much appreciated."

Section 4 of the Carmichael bill, H.B. 361, No. 72, approved March 18, 1933 reads as follows:

"Section 4. All waters of this state are hereby declared to be public waters if such waters of any river, creek, lake, brook, bayou, bay, channel, canal, lagoon or other body, traverses, bounds, flows upon or through, or touches lands title to which is held by more than one person, firm or corporation. Any water impounded by the construction of any lock, dam or other devices used for impounding water, and placed across the channel of any public waters, as defined in this section, are hereby declared to be public waters. Private waters are for the purpose of this act defined as any body of water wholly on lands held in fee or in trust, or under lease, by any one person, firm or corporation; provided, however, that this section shall not apply to a branch or other body of running water, which has at its normal stage of flow insufficient volume of water to maintain fish protected by the provisions of this Act. Provided further that before any person may go or be upon the posted lands of another for the purpose of fishing he or she shall procure the consent of the land-owner or his agent."

Under the facts stated by you I can come to no other conclusion than that the body of water referred to by you is made public water by the Carmichael Bill, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Note: This opinion overruled. See opinion dated August 1, 1933 at page 326.

July 12, 1933.

Hon. Grover C. Hall,
Judge of Probate,
Montgomery, Alabama.

On redemption of land bought in by the State, the taxes for the current assessment year need not be paid by the redemptioner at the time of redemption; but notice of the redemption should be given by the Judge of Probate to the Tax Assessor and the Tax Assessor should forthwith list such land for assessment at the same valuation under which it was sold, in the name of the person redeeming the same, on his records of assessment and the Tax Collector's abstract of assessment and furnish the State Auditor an abstract of such supplemental assessment.—Act No. 19, approved September 15, 1932.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of May 10, 1933, was duly received. You write as follows:

"On August 20, 1932, all lands in Montgomery County on which the 1931 taxes had not been paid were sold for taxes in the regular manner. Since that time numerous redemptions have been made and on redemptions made since the passage of the Act of September 15, 1932, amending Section 3110 of the Code, we have been permitting them to redeem as follows:

(For example)

Amount of sale of 8-20-32	\$10.00
Interest of 15 per cent 8-20 to 4-20-33	1.00
Fee to redeem	1.00
	\$12 00

and have also required them to go to the Collector's office and pay the taxes for the year 1931 and exhibit us the receipt for same. We have not charged the taxes for 1933—the current assessing year—as the Act of September 15, 1932, does not seem to require it. The question has arisen as to whether we should charge for the 1933 taxes and we would like to have your opinion as to whether we should charge it or not. We are familiar with your opinion regarding the interest to be charged on redemptions from sale."

In reply will say that the problem presented by Act No. 19, approved September 15, 1932, amending Section 3110 of the Code of Alabama is to find what was the legislative intent. Evidently the person who wrote the Act did not understand the tax system and an intent must be found which will effectuate the collection of the taxes for the tax assessment year current at the time of redemption; but not to require the redemptioner to pay the taxes for the current assessment until the taxes of such current assessment shall regularly fall due.

In order to give the Act that meaning, it is necessary to construe what is meant by the words "regularly assessed" in the following part of said Act: "And if not **regularly assessed** on or before February 1st in the name of the person redeeming the same, or by any other person interested therein, the Probate Judge shall give notice of such redemption to the Tax Assessor, who shall forthwith list such land for assessment in the name of the person redeeming the same, at the same valuation of assessment under which it was sold, shall enter the same on his records of assessment and collector's abstract of assessment and shall furnish to the State Auditor an abstract of such supplemental assessment, and the taxes thereon shall be due and collectable as other taxes."

To construe the words "regularly assessed" to mean assessed as provided by Section 269 of the 1919 Revenue Act would destroy another plain legislative intent of the Act. It means if not regularly assessed by the Tax Assessor for the tax assessment year in which redemption is made, in the manner that other property is assessed, so that the taxes may be collected in the regular order of collections; and "the Judge of Probate shall give notice of such redemption to the Tax Assessor, who shall forthwith list such lands for assessment" etc.

Of course, if Tax Collector, Judge of Probate, Tax Assessor and Auditor have each discharged his duty, it is regularly assessed within the meaning of Section 269 of the 1919 Revenue Act, but not within the meaning of said Act No. 19.

I would advise the Judge of Probate to consider, in each case, that lands bought in by the State had not subsequently been regularly assessed in the assessment year of redemption within the meaning of said Act No. 19; and to give notice of such redemption to the Tax Assessor so that he may discharge his duties with reference thereto and fix the matter so that the Tax Collector may collect the taxes when due.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Mr. J. R. Gamble,
State Tax Commission,
CAPITOL.

Drivers of non-resident trucks for hire.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of June 16, 1933, which is as follows:

"It is our understanding that the other states permit chauffeurs operating Alabama trucks for hire to enter those states without requiring them to take out chauffeur license, provided they have their Alabama chauffeur buttons with them.

"In your opinion, does our Alabama law of reciprocity permit drivers of non-resident trucks for hire to operate their trucks in this state with their home state chauffeur license and not require them to buy Alabama chauffeur license?

I am of the opinion that your inquiry should be answered in the negative. Subsection 31 of Schedule 13 of Section 334, Revenue Laws 1929, provides for the exemption of non-resident owners of motor vehicles, not used for hire from the payment of the registration license. However, it does not mention chauffeur licenses.

This opinion is not to be construed as holding non-resident chauffeurs liable for license as there seems to be no provision made for payment of same in Subsection 26, Schedule 13, Section 334, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Board of Revenue,
Linden, Marengo County, Alabama.

1. Where a taxpayer, through any mistake or by reason of any double assessment or by any error in the assessment or collection of taxes, or other error has paid taxes that were not due upon the land of such taxpayer, he has two years from the time of such payment to file claim for overpayment.

2. The time for filing such claim is governed by Section 3140 of the Code of Alabama, and is not barred if not filed with the Court of County Commissioners within twelve months as required for other claims by section 228 of the Code of Alabama.

3. Where property is duly assessed by the tax assessor and an abstract thereof furnished the tax collector as required by law, such abstract is authority for the tax collector to collect such taxes and renders him liable if he fails to collect, where collection is possible.

4. Under the circumstances named in letter, the payment of the taxes was properly received by the tax collector from one holding a mortgage on part of the land mortgaged, if such mortgagee elected to pay such taxes. Such mortgagee's right to be remunerated for paying such taxes is against the mortgagor, the taxpayer, his executor or administrator. It has no right of claim under Section 3140, Code of Alabama.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of recent date to hand. You write as follows:

"The heirs of B own a large tract of land in Marengo County, Alabama, which they inherited from their father.

Their father, in his lifetime borrowed money from the Union Central Life Insurance Company and to secure the payment of same executed to the Insurance Company a mortgage on practically one half of said lands; the mortgage is outstanding and unpaid.

"On August 29, 1931, none of the state and county taxes on any of the lands had been paid and, the Insurance Company wrote the Tax Collector of Marengo, County, giving him a list of the lands embraced in its mortgage, stating that it desired to pay the taxes on the lands covered by its mortgage, and requesting that he advise it of the amount of such taxes.

"The tax collector read the letter hurriedly, overlooking the fact that the Insurance Company only desired to pay taxes on the lands embraced in its mortgage, and in replying to the same gave, as the amount of said tax, the amount of the taxes on **all** of said lands owned by the heirs of B (both those included in said mortgage and those not included therein). Thereupon the Insurance Company sent the tax collector its check for the taxes on **all** of said lands—believing that it was only paying the taxes on the lands embraced in its mortgage; the over-payment amounting to \$152.37 was distributed as follows: State tax \$50.24, County tax \$86.77, School Fund \$15.36.

"On March 15, 1933 the Insurance Company filed its petition with the Probate Judge of Marengo County, under the provision of Code Section 3140 et seq (which was in due form), made its proof thereunder, and the Probate Judge has made the certificates, as provided by law, to be filed with the State Auditor and the Board of Revenue of Marengo County; one of these certificates has been filed by the Insurance Company with said Board of Revenue.

"The Board of Revenue desires your opinion on the following points:

"1. Is it necessary that the Insurance Company in addition to filing with it the above mentioned certificate, also file with the Board of Revenue a 'claim' for the amount shown to be due by the county, as provided by Code Sec. 225?

"2. Is not the payment of such claim (or the amount shown to be due from the County by the Probate Judge's certificate) barred under the provisions of Code Section 228, because not presented within 12 months?

"3. If this claim is not barred, and the amount thereof is refunded by the county to the Insurance Company—can the county recover the amount involved from the Tax Collector?

"4. Can the tax collector, under the circumstances, again collect this amount from the heirs of B, or enforce collection of the same by a sale of the lands not embraced in Insurance Company's mortgage?"

In answer to question 1, will say that the manner of presentation of such claim to the Board of Revenue is not governed by Section 225 of the Code of Alabama, but by Section 3143 of the Code of Alabama.

In answer to question 2 will say that the limitation of time for presenting such claim is governed by Section 3140 of the Code of Alabama and not by Section 228 of the Code of Alabama. Said Section 3140 of the Code provides for the presentation of such claim within two years from the date of such payment.

In answer to your third question will say that the county should not lose the money.

From the facts stated by you, in my opinion, the Insurance Company is not entitled to have any of the money paid back to it by the State or county. The facts in your letter, do not, in my opinion, make out a case falling under Section 3140 of the Code of Alabama. Of course, the tax collector and his bond are responsible for failure to collect any taxes which should have been collected. If the failure to collect was his fault, then he and his bond are, in my opinion, liable for any loss by the State or county. The property was duly assessed and placed upon the abstract furnished the collector.—**Fidelity and Deposit Company vs. Mobile**, 124 Ala. 145.

In answer to your fourth question, will say that, in my opinion, he could not by any legal process do so. In my opinion, Section 412 of the 1919 Revenue Act would not cover this case and I know of no other.

The taxes assessed were a lien on the land upon which the Insurance Company had a mortgage as well as the other property of the taxpayer. Section 3140 of the Code was not intended to protect mortgagees who failed to take advantage of Act No. 578, approved October 1, 1923. If the mortga-

gee desired to take advantage of said Act No. 578, and was entitled to do so, it should have done so at the time it paid the taxes. Primarily the land was liable for the taxes paid and the mortgagee could pay them, if it desired to do so, and release the land upon which it had a mortgage; and, after doing so, it has no legal right under Section 3140 of the Code to make application for a return of part of the money paid. The lands and property were properly assessed. There was no error in the tax collector receiving the payment of such taxes from a mortgagee of part of the land assessed. All taxes assessed against the taxpayer was a lien on all the land assessed. This lien could be removed only by paying all the taxes due the taxpayer, or, if the part of the land mortgaged was valued separately in the assessment, and there was sufficient other property assessed to pay the balance of the taxes, the mortgagee had the right to pay the taxes on the mortgaged land and release it from the tax lien. The mortgagee did not do this; but paid all taxes due by the taxpayer, which it had a right to do. The mortgagee, in my opinion, is not a taxpayer within the meaning of Section 3140 of the Code. The mortgagor is the taxpayer. Anyone may pay the taxes of another, if he desires to, and, when paid, that is an end of the matter so far as the State and county are concerned. A taxpayer is one against whom taxes are assessed or his heirs, executors or administrators.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Hon. A. F. Harman,
State Department of Education,
CAPITOL.

County Treasurer of School Funds—Liable for illegal expenditures.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of June 2, 1933 in which you requested an opinion as to whether or not Mr. J. B. Ford, Treasurer of Tallapoosa County School Funds would be liable if he paid out school moneys on orders of County Board of Education when such claim was illegal.

From the facts stated it is impossible for me to pass on the legality of the warrants mentioned by you. But for the purpose of answering your

inquiry, assuming them to be illegal, I am of the opinion that Mr. Ford would be liable personally and on his bond if paid by him.

Opinions Attorney General, 1928-30, page 179.

Yours truly
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Hon. J. A. Carnley,
Judge of Probate,
Elba, Alabama.

Gas Tax—Use of to match R. F. C. funds.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 28, 1933, in which you request my opinion as to whether or not the gas tax funds may be appropriated by the county to match R. F. C. funds.

I know of no direct authority whereby the gas tax funds may be appropriated to match R. F. C. funds. Gas tax funds must be used strictly in accordance with the authority authorizing the expenditure of same.

However, gas tax funds may be appropriated to match R. F. C. funds provided that same are used exclusively in strict compliance with the authority authorizing the expenditure of the gas tax fund, viz: for the construction and maintenance of public roads and bridges in the county or other legal expenditures of said gas tax funds.—Opinions of Attorney General, Book 14, page 45, (Office Edition).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Hon. A. F. Harmon,
State Superintendent of Education,
Montgomery, Alabama.

(1) Schools—Revenue of fiscal year must first be used for expenditures of that year.

(2) Schools—State Board of Education is now without authority to borrow money.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 10, 1933, in which you request my opinion as follows:

(1) If the funds available to certain institutions under the supervision of the State Board of Education, viz., State Teachers College, the A. & M. Institute and the Alabama School of Trades, are not sufficient to meet their current running expenses for a fiscal year, will it be permissible to use any part of said current year's fund to meet the interest payments for interest on indebtedness incurred in a prior fiscal year or years?

(2) If the funds available to the institution are not sufficient to meet the necessary expenses for operation and liquidate the interest payments due, does the State Board of Education have authority to execute notes in payment of this interest?

I am of the opinion that your first inquiry should be answered in the negative.

In view of the provisions of the Budget and Financial Control Act, and the recent decision of the Supreme Court in the case of Ball vs. Blan, State Treasurer, (3rd Div. 48 in mss.) the current revenues of a fiscal year must first be applied to the current expenditures of that fiscal year. In other words, current expenditures must first be met before past due indebtedness or parts thereof may be paid. Interest on a debt incurred is as much a part of the debt as the principal itself. If the principal may not be paid, the interest thereon likewise may not be paid unless there be a specific authority of law to pay said interest.

I am of the opinion that your second inquiry should also be answered in the negative. The authority of the State Board of Education to borrow money under Section 58 of the School Code of 1927, has been repealed by Act No. 294, Senate Bill 272, approved November 9, 1932, (Acts 1932, p. 298).

If notes have been issued by the State Board of Education after the passage of the Act above cited, and other notes taken up thereby, the State Board of Education may return the notes so taken up as the new notes issued in lieu of the old ones are of no force and effect.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Hon. John Brandon,
State Auditor,
CAPITOL.

The judge or the court alone is charged with the duty of determining the number of days required to work out any given account of costs in a particular case, and the clerk of the court cannot be penalized for any mistake made by the judge in fixing said number of days.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 8, 1933, in which you request my opinion as follows:

"1. In a case where the clerk makes an error in figuring the number of days necessary to pay the cost, isn't it the duty of the Convict Department to return said transcript for correction?

"2. If the cost in the case amounts to \$31.70, and the transcript shows that the clerk figured 42 day at 75c, making a total of \$31.50, has the Convict Department authority to deduct 20c from the clerks fees, to make up the difference?

"3. Isn't it the duty of the Presiding Judge to fix the number of days required to work out the cost?

"4. Can the clerk be penalized for an error that the Presiding Judge makes in a sentence for costs?

"5. If it could be proven that a clerk fixed the number of days in a sentence of cost, couldn't the attorney for the defendant ask for a new trial on the grounds that the sentence was fixed by a party that had no authority to act in the case?

"6. If the transcript is returned to the clerk for correction in the number of days sentenced for cost, and the clerk refuses to change the number of days on the grounds that he hadn't any authority to fix the sentence, can the Convict Department penalize him by deducting part of his fees that he is entitled to under the law?

Answering your first inquiry, if the thirty days have not elapsed so as to take the matter out of the hands of the Court trying the case, my answer is in the affirmative. See opinion of Attorney General, May 1, 1931, to Hon. H. H. Stewart, Assistant Director, State Board of Administration.

Answering your second inquiry, it is my opinion the Court and only the Court, can fix the number of days required to pay the costs in any particular case under Sections 3290 and 5291, Code of Alabama, 1923. Under these sections it is the duty of the Court or Judge to figure out the number of days required to pay the costs, and not the duty of the clerk. In other words the judge and not the clerk of the court is charged with this.

Section 3667, Code of Alabama, 1923, fixes the costs in penitentiary cases which the State must pay on conviction and it will pay no other. This section is made applicable in hard labor sentences by an Act approved February 18, 1927, Section 3, General Acts 1927, p. 52. You will note that Section 3667, *supra*, says among other things: "Shall be paid." I construe this to mean "must be paid." It is, therefore, mandatory. Then if under the opinion of the Attorney General, *supra*, you cannot sentence for a fractional part of a day, then where there is a fractional day the defendant shall be sentenced for a full day, and the full cost for that particular fractional part of a day should be paid.

My answer to your third inquiry is in the affirmative. See Section 3291, *supra*, 88 Ala. 128.

My answer to your fourth inquiry is in the negative.

My answer to your second inquiry has answered the fifth. The clerk has no power to fix the number of days required to work out costs, only the judge or the court trying the case can do this, and should this be attempted by the clerk such judgement would be void and could reasonably be taken advantage of.

Answering your sixth inquiry, my answer is in the negative. Why penalize the clerk? Why not the sheriff or the witness just as well? The clerk is no more charged with the duty of fixing the number of days required to work out the costs than is the sheriff or the witness. He only acts in a clerical capacity, and determining the number of days required to work out any given cost is a judicial ascertainment and must be performed by the court or the judge and he or it alone.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 12, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Taxes—credited to the fiscal year in which same are collected.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 27, 1933, in which you state that due to a recently enacted law the payment of ad valorem taxes for the year 1932-33 can be delayed until December 10, 1933. You further state that this will cause a substantial part of the current year taxes to be collected and available after the close of the current year.

In view of the above, you request my opinion as to whether or not the three mill ad valorem tax for school purposes collected after October 1, 1933 and prior to December 10, 1933 will be credited back as part of receipts available to 1932-33 or will that be considered as part of the receipts of 1933-34.

I am of the opinion that the taxes in question should be considered a part of and credited as receipts of the fiscal year 1933-34. This is true due to the provisions of the Financial Budget Control Act and the recent decision of the Supreme Court in the case of Hall vs. Blan, State Treasurer, 3d Div. 48 MS. relative to the application of current receipts for current expenditures. This is, also, of necessity true from a practical standpoint. It would be impractical, if not almost impossible, to keep the books open for an indefinite period of time in order to credit collections that may be made several years after same are due and apply said collections to the year in which they may have been due. Further, the law does not contemplate that there shall be any outstanding indebtedness at the end of any fiscal year.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 13, 1933.

Hon. W. C. Batson,
Judge of Probate,
LaFayette, Alabama.

Any person who, without first procuring a license to practice law, and as a vocation, conducts a collection agency is guilty of a misdemeanor not

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of December 2nd has been received. Your letter follows:

"Please give me your opinion as to whether or not the act defining attorney as given on pages 669-670 of the Acts of 1927, prevents one from operating a collection agency who is not an attorney?"

The Act of the Legislature found at pages 669 and 670, Acts of 1927, approved September 7, 1927, has been examined.

The Act in question provides that any person who, as a vocation, enforces, accrues, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer or employee in the ordinary sense: Is Practicing Law, and the person who does the things just mentioned without first procuring a license to practice law, is guilty of a misdemeanor.

It is, therefore, my judgment that any person who, as a vocation, conducts a collection agency without first procuring a license to practice law, violates the law and is guilty of a misdemeanor.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 13, 1933.

Mr. J. R. Gamble,
State Tax Commission,
CAPITOL.

Money Lender's License.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you enclose a letter from Mr. B. H. Cooper, License Inspector for Jefferson County, which letter is as follows:

"Mr. O. C. Gresham of Gresham & Company, Birmingham, Alabama, represents a number of clients and their home offices and residences are in foreign states. These persons and firms purchased from the Alabama Home & Trust Company (now in the hands of Receiver) mortgages that were made in Birmingham by the Trust Company. Mr. Gresham is not lending any money but he extends mortgages in many instances, and charges a brokerage fee at times. Checks given in payment for interest or part payment on principal are made direct to the person or firm that owns the mortgage. Such business represents approximately ninety-eight percent of all business transacted by Gresham for others. As outlined, what is the opinion of the Commission as to the question of whether he is due to pay the State and County Money Lender's License?

"Two or three percent of Gresham's business is for persons or firms who live in Alabama and this small percent is transacted in the same manner and way as that of out-of-state clients. The question arises, when you combine Gresham's business, whether or not he is due to pay State and County Money Lender License. Gresham was in my office on yesterday and statements I make here in writing were given to me by him orally."

I am of the opinion that your question must be answered in the affirmative. The Supreme Court in the case of *Tucker vs. State*, 105, So. 190, in construing Schedule 101, Acts 1919, page 430 (Schedule 150, Section 334, Revenue Laws of 1929) said as follows:

"This appeal involves an interpretation of Schedule 101, Acts 1919, page 430, and which is set out in the case of *Maury vs. State*, 208 Ala. 46, 93 So. 802, wherein the constitutionality of same was upheld by a majority of the court. The court is of the opinion that said subdivision applies to all who engage in the business of lending money as an incident to the real estate business, whether as broker, agent, or for themselves, and therefore includes this appellant, who was engaged in the real estate business on commission, and who admitted that he accepted application for and negotiated loans for others and received compensation therefor.

The court is of the opinion that the provision is not repugnant to the constitution because the license fee is on a scalage basis, proportionate to the population of the cities and towns.

We think the above likewise applies to Schedule 122, *supra*.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 13, 1933.

Hon. Wm. C. Oates,
Secretary-Examiner,
State Securities Commission,
CAPITOL.

Sureties on faithful performance of blue sky bond liable for failure of principal to pay fees covering quarterly reports.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of April 27th. Your letter follows:

"In our letter of November 8, 1932, we wrote you concerning the status of said Alabama Braid Corporation, to which you replied under date of December 29, 1932, advising us to file with the Receiver of the company claim for said fees. The outstanding \$150,000.00 First Mortgage 7 per cent Gold Bonds of said corporation, of course, constitutes a preferred claim, which we understand leaves nothing for other creditors.

"Said company executed statutory Blue Sky bond in the sum of \$2,000.00 with Fidelity and Deposit Company of Maryland, Sub-section (3) of the above mentioned Alabama Code Section 9887 as amended by Section 5, A. G. L. 1931, among other things provides: 'Said bond shall be payable to the State of Alabama and be conditioned upon the truthfulness of the statements set forth in the application filed with the Commission and of the written evidence or other probative matter filed with the Commission in connection with such application, and for the faithful compliance by said applicant and his agents with the provisions of this Article and of any lawful condition or requirement made by the Commission in granting such application.' Moreover, the order granting the registration in question contained as a condition concurrent to said commission's order that said company file all quarterly reports and all other reports required by the said Commission and by the Alabama Securities Act. This requirement of the law and of the Commission's order has been breached by the said Alabama Braid Corporation as explained in our letter of November 8, 1932. Said company on said date owed this Commission 12 quarterly reports and 12 quarterly report filing fees in the total sum of \$120.00.

"QUAERE

"Would the surety or bonding company be liable to the State of Alabama for the quarterly report filing fees in the sum of \$120.00, under the above mentioned sub-section (3) of Section 9887 of the Code, under this Commission's order?

"The Fidelity & Deposit Company of Maryland are seeking and have been persistently seeking a release of themselves from any liability under said bond. Would request that you advise this department whether or not Fidelity & Deposit Company of Maryland is or is not liable for the above mentioned quarterly report filing fees in the sum of \$120.00. If, in your opinion, said Fidelity & Deposit Company is so liable, would request further that you write them making a demand upon them for the payment thereof. The Birmingham agents for Fidelity and Deposit Company of Maryland are Meyer and Engel Agency, Inc., 1909 First Avenue, Birmingham, Alabama."

Under the facts stated in your letter, it is my judgment that the surety

on this bond is liable to the State for the quarterly filing fees for the twelve quarters involved.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 13, 1933.

Mr. J. R. Gamble,
State Tax Commission,
CAPITOL.

Truck—License.

Opinion by Assistant Attorney General Lawson

Dear Sir:

I have your letter of June 16, 1933, in which you enclose a letter from Mr. Mr. B. H. Cooper, License Inspector of Jefferson County which letter is as follows:

“Court of Misdemeanors had presented to them a case of ours yesterday morning the facts being as follows:

“ ‘Party owned and operated a truck—manufacturer’s rating 1½ ton. He bought and used on this truck an H-2 tag. After the truck was bought the owner had an extra axle and two wheels put on it, giving him two axles and four wheels in the rear. He also extended the chassis five or six feet. The manufacturer advertises that the capacity of the truck can be increased if the additions are made such as mentioned above.’

“We placed the operator of the truck under arrest and alleged that he was due to buy in the State of Alabama a trailer tag. The Judge ruled that our allegation was wrong but was of the opinion that the operator of the truck should buy an H-3 or H-4 tag because he had increased the capacity of the truck by adding new equipment to it.”

You desire an opinion of this office as to whether or not the owner of the truck is liable for an H-3 or H-4 tag.

I am of the opinion that your question should be answered in the affirmative. The Supreme Court in the recent case of State vs. Hobbie Grocery Company, decided that the manufacturer’s rated capacity was the basis upon which truck tags are to be computed. In my opinion, if the manufacturers

advertise that by placing additional wheels, axles, etc. on a certain truck that the capacity is thereby increased, that when this is done the owner thereof is liable for the corresponding license.

Yours vrry truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 14, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Schools—Payment of past incurred indebtedness after current obligations are met.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 19, 1933, in which you request my opinion as to whether or not a County Board of Education may use the surplus revenues of the current fiscal year to pay obligations incurred during the past fiscal year for teachers' salaries after all expenses of the current fiscal year have been paid.

I am of the opinion that your inquiry should be answered in the affirmative provided the past incurred indebtednesses are valid.

In view of the provisions of the Budget and Financial Control Act, and the recent decision of the Supreme Court in the case of Hall vs. Blan, State Treasurer, (3rd Div. 48 in mss.) the current revenues of a fiscal year must first be applied to the current expenditures of that fiscal year. In other words, current expenditures must first be met before past due indebtedness or parts thereof may be paid. But I see no objections to applying the surplus of any fiscal year, after all expenditures of that fiscal year have been paid, to the retirement of valid indebtedness incurred during a previous fiscal year or years.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 14, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Taxes payable only in money.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of June 8, 1933, has been received. Your letter follows:

"Under the provisions of the Alabama Motor Carrier Act of 1931, motor transportation companies are required to pay to the State certain mileage taxes as particularly set forth under Section 5 of said Act.

"Under Section 7 of said Act, motor transportation companies file with the Commission bonds, with some surety company as surety thereon, to secure payment of such mileage, etc.

"If a motor transportation company makes default in the payment of the mileage taxes due by it under said Act and demand must be made therefor upon the surety company, may the surety company satisfy such demand by delivery to the State of Alabama of warrants issued by the State? The said mileage taxes under said Alabama Motor Carrier Act of 1931 appear to be payable in money. Can the State accept such warrants in lieu of money?"

The Alabama Public Service Commission is without authority in law to accept warrants issued by the State in payment of the mileage taxes in question.

These mileage taxes are payable only in money.

Yours very truly
THOMAS E. KNIGHT, JR.,
Attorney General.

July 14, 1933.

Hon. J. M. Yeilding,
County Treasurer,
Birmingham Jefferson County, Alabama.

1. Under provisions of Act No. 60 approved March 10, 1933, where one of the designated County officers makes application to the Court of County Commisisoners to designate depository and such Court of

County Commissioners designate such depository, then the officer is not liable for a loss of funds through failure or insolvency of such depository bank.

2. State and County have preferred claim against such bank for losses resulting from insolvency.

3. The provisions of the Act apply to deposits made subsequent to the passage of such Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 31, 1933, in which you state:

"As Treasurer of Jefferson County, I would appreciate your giving me at your early convenience your opinion as to the following matters in connection with Act No. 60, House No. 366, Manasco enacted by the special session of the Legislature of Alabama of 1933, namely:

"(1). If upon my application, the County Commission of Jefferson County shall designate a bank or trust company organized under the laws of the State of Alabama as a depository, and if under the terms of such designation the said County Commission requires no security from said bank, will I, as County Treasurer, or the sureties on my official bond be liable for public moneys deposited by me in said bank in the event of the failure or closing of said bank where I do not require of said bank a depository bond or other security for the public moneys so deposited?

"(2) If upon my application, the County Commission of Jefferson County shall designate a national bank as a depository, and if under the terms of such designation the said County Commission requires no security from said bank, will I as County Treasurer, or the sureties on my official bond be liable for public moneys deposited by me in said bank in the event of the failure or closing of said bank where I do not require of said bank a depository bond or other security for the public moneys so deposited?

"(3) Would I as County Treasurer of Jefferson County have a preferred claim against any such State bank which may be designated as depository in the event of the closing of such State bank?

"(4) Would I as County Treasurer of Jefferson County have a preferred claim against any such national bank which may be designated as depository in the event of the closing of such national bank?

"(5) Would the provisions of the act in question apply to deposits heretofore made for which security has heretofore been taken in the

event said security should be surrendered by me, or would the provisions of said act have application only to further and additional funds which might hereafter be deposited in any such bank following the designation of such bank as a depository under the terms of this act?"

Act No. 60 House Bill 356, approved March 10, 1933, provides:

"That upon the application of county tax collectors, county treasurers, etc., the Court of County Commissioners shall appoint a bank or trust company as a depository in which such officers may deposit moneys coming into the hands of such officers. * * * Such court shall from time to time by resolution spread upon its minutes **make such requirements** as may be deemed necessary for the safety of such funds so deposited not inconsistent with the general laws of this State."

There is a similar provision about funds in the hands of the County Treasurer of School Funds except that the County Board of Education shall make the appointment. Section 4 provides:

"That if any of such funds are dissipated or lost by reason of the insolvency or failure of such bank such dissipation or loss shall not constitute liability on the official bonds of such officers nor liability on the sureties thereon."

This Section answers question one and two. The Act provides that the Court of County Commissioners or similar governing body shall designate the depository and that any loss from the failure of the bank shall not constitute a liability on the official bond of such officer. It is apparent, therefore, that the provision in Section 2 providing that the Court of County Commissioners shall make such requirements as may be necessary for the safety of such funds is to provide for the fixing of a depository bond or other adequate protection of the fund. As the responsibility is placed on the Court of County Commissioners. I am of the opinion that the purpose and intent of the Act is to relieve the officer from liability if the funds are lost through the failure or insolvency of the bank. The responsibility being placed on the Court of County Commissioners, I am of the opinion that should they fail to require a depository bond the officer depositing the funds in compliance with the terms of the Act would nevertheless be relieved by virtue of the provisions of Section 4. It would seem immaterial whether such designated depository is either a state or national bank.

Questions three and four of your letter are answered by Section 5 which specifically provides that in case of such insolvency the County and State shall have a preferred claim against such bank for the amount of the loss.

In answer to question five I am of the opinion that the Act would not apply to deposits previously made for which security has heretofore been giv-

en, but would only apply to further and additional funds which might thereafter be deposited.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 14, 1933.

Hon. Page S. Bunker,
State Forester,
CAPITOL,

Under the authority of the Pan Handle Oil case, gasoline purchased by the government to be used in emergency conservation work is not subject to tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 27th in which you state:

"Under the provisions of the Act of Congress entitled 'An Act for the relief of unemployment through the performance of useful public work, and for other purposes' approved March 31, 1933, a Federal agency known as the Emergency Conservation Work has been established with headquarters at Washington, D. C. The activities of this Federal Bureau are carried on in Alabama in cooperation with the State Commission of Forestry. In connection with the Emergency Conservation Work in this State the Federal Government uses certain gasoline motor vehicles. The manner in which such vehicles are employed is fourfold as follows:

"1. Vehicles owned by the Federal Government and used exclusively upon Government work.

"2. Vehicles leased by the United States from private owners for strictly official Federal use.

"3. Vehicles owned by the State but loaned to the Federal Government by the State Commission of Forestry for strictly official Federal use.

"4. Cars privately owned by Federal employees and used on strictly official Federal work at a fixed rate of reimbursement per mile.

"Your opinion is requested as to whether the provisions of State laws as to the levying and payment of State and County taxes on gasoline, oil and grease apply to the vehicles engaged exclusively in Federal work under any or all of the above four captions."

In my opinion the answer to each of your questions is dependent on whether or not the gasoline is bought by the Government and used for governmental purposes. If this be true, under the authority of the Pan Handle Oil case, I am of the opinion that it is not subject to tax. If the gasoline is purchased by anyone other than the government, I am of the opinion that it is subject to the tax.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 17, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Claims—Payment of claim of prior fiscal year out of surplus of this fiscal year's revenue.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 30, 1933 in which you state the following:

There have been presented for payment several vouchers of the Highway Department, for materials received prior to the beginning of this fiscal year.

"Due to various reasons, such as errors in description, failure to prove delivery, etc., the accounts could not be substantiated, vouchered and approved during the year in which they were incurred.

For your information, permit me to say, that the Highway Department operates on specific revenues levied for its sole use and receives no appropriation from the Central Fund of the State.

Under the Budget Act, any surplus remaining at the close of the year, reverts to the Fund from which the appropriation was made. Therefore any surplus in Highway Funds, remains to the credit of the Highway Department. Under these conditions, it appears to me that the Highway Department can make provision for paying these claims

out of current revenue. If this cannot be done, there is no way by which these creditors can receive payment, as the McDaniel-Teasley Amendment makes no provision for accounts for which warrants have not been issued.

You request my opinion as to whether or not these accounts are barred in view of the recent decision of the Supreme Court, which held that current revenues must first be used for current operations.

I am of the opinion that said accounts may be paid out of this fiscal year's revenue, provided the fund out of which payment is to be made is sufficient to pay same after all current expenses first have been met. Without determining the status of the accounts in question as regards fiscal years, I see no objection to paying said accounts in this manner.

The accounts are payable out of the Highway Fund. If there be a surplus in said fund at the end of a fiscal year it remains in that fund. There is no other method or means by which these accounts can ever be paid. In view of these considerations, I am of the opinion that these accounts may be paid out of any surplus in the Highway Fund for this fiscal year after payment has been made for all necessary current expenses.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 17, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

When case pending in the Circuit Court is improperly dismissed the officers of the court are entitled to their costs against the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 15, 1933, in which you request my opinion as follows:

"Will you give consideration to the following statement of facts and advise as to the questions asked?

" 'A warrant was sworn out before a Justice of the Peace charging the Defendant with violation of the Game and Fish, viz. (Seining), and

upon the trial of this case the Defendant demanded a trial by Jury under Section 3854, Code of 1923, according to the Docket of the Justice of the Peace. He did not try the case, but turned the affidavit and warrant, together with bond, over to the Clerk of the Circuit Court and from the file no indication is given as to why the papers were turned over to the Clerk. The Clerk, instead of giving these papers to the Solicitor or foreman of the next Grand Jury, docketed a case against the defendant in Circuit Court and subpoenaed the witness whose name appeared on affidavit and warrant, to appear before the Circuit Court in behalf of the State. When the case was called the Judge of the Circuit Court upon motion of the Defendant, made the following order: "This case, being improperly on the Docket, is hereby dismissed and the Clerk is ordered to enter judgment of dismissal." Prior to this order no indictment had been returned against the defendant.

"1. Was the case improperly on the Docket?

"2. If improperly on the Docket, would the Clerk be entitled to fees from the Fine and Forfeiture Fund under Section 4039, as amended Acts 1927, page 45?

"3. If improperly on the Docket, would the Sheriff be entitled to fees from the Fine and Forfeiture?"

It is my opinion the case was not improperly on the docket of the Circuit Court. You call my attention to Section 3854, Code of Alabama, and I naturally infer that the case went on the circuit court docket under the provisions of this section. If it did it should have been entered on the docket and the case set down for trial at a jury term. It would not have gone to the Grand Jury unless such a demand was made before the Justice. If he just simply demanded trial by jury it should have been tried as suggested above. If the court wrongfully dismissed the case as being improperly on the circuit court docket, the officers would be entitled to their costs against the Fine and Forefeiture Fund of the County.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 17, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Clerks entitled to twenty-five cents for issuing witness certificates in civil cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 15, 1933, in which you request my opinion as follows:

"Will you give consideration to the following statement of facts and advise as to the question asked?

"Under Section 3769 and 7234, Code of 1923, the Clerk of the Circuit Court issues certificates to witnesses, when attendance is proven. Section 3769 provides that no fee shall be demanded or charged for issuing certificates to State witnesses. Section 7234 is silent as to fees for issuing certificates to witnesses in Civil cases. Section 7278, item 39, provides for a fee of 25c for making each necessary certificate not otherwise provided for in Civil Cases and under this section the Clerk has been taxing and collecting 25c for each certificate issued to witnesses in Civil Cases.

"1. Is the Clerk of the Circuit Court entitled to a fee of 25c for issuing certificates to witnesses in Civil Cases?"

It is my opinion the clerk is entitled to this fee. It is true he cannot receive any compensation for this service in criminal cases for the reason Section 3769, Code of Alabama 1923, specifically provides that no charge can be made by the clerk for this service in criminal cases.

"3769. Witness' certificates; how payable; clerk not entitled to fee for issuing.—It is the duty of the clerk of the court to issue a certificate to each witness appearing on the part of the State, stating therein the amount of compensation to which he is entitled, the facts which, under the provisions of section 3763 (6660), make it a good claim against the county, which certificate is payable by the treasurer out of any fines and forfeitures in the county treasury; the clerk who issues the certificates hereinabove mentioned shall not be entitled to demand or charge any fee for performing this duty."

It is true that Section 7234, Code of Alabama, 1923, is silent as to any fee to be charged by the clerk for issuing such certificate in civil cases, but you

will find that in the schedule of fees provided for clerks of the circuit courts the following item of cost: "Making each necessary certificate not otherwise provided for 25c."

I am, therefore, of the opinion, under the above quoted paragraph, that the clerk would be entitled to such fee for issuing witness certificates in civil cases.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. F. B. Dexter,
Treasurer of Wilcox County,
Camden, Alabama.

Limitation of Actions—County warrants.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 22, 1933, in which you state the following facts:

On Nov. 8, 1920, Wilcox County issued its warrant in favor of M. C. Weir for \$182.25; on Feb. 14, 1921 it issued another warrant to M. C. Weir for \$31.00; and on Nov. 16, 1921 it issued another to Wilkinson Mercantile Co. for \$28.85. These warrants were issued after claims were duly allowed by our Court of County Commissioners. They are now, for the first time, being presented to me for payment.

You request my opinion as to whether or not the above mentioned warrants are subject to the statute of limitations.

I am of the opinion that your inquiry should be answered in the affirmative

A county warrant, to which the seal of the county is attached, is a specialty and governed by the statute applicable to sealed instruments generally. County warrants not under seal are governed as to the period of limitation by the statutes governing other instruments for the payment of money, in the absence of legislation expressly providing a different limitation.—37 Corpus Juris, 755.

Whether the warrants in question are sealed instruments or not is immaterial to the present inquiry. In either event same are subject to our sta-

tute of limitations, viz: ten years for sealed instruments and six years for instruments not under seal.—Section 8943-4, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. H. L. Stutts,
Judge of Probate, Lauderdale County,
Florence, Alabama.

Employment by Commissioners Court of relatives of member of said Court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 25, 1933, in which you request my opinion as follows:

"Is there reason or excuse for any Probate Judge or County Commissioner employing any relative by blood or marriage to the fourth degree to do any work for the County?"

"If the Court of County Commissioners employ relative within fourth degree to work for the County are they subject to any further penalty than a fine of not less than \$10.00 nor more than \$100.00?"

"Is the employing of relatives of the Court within the fourth degree permissible by the County's Road Supervisor?"

Answering your request, I call your attention to the case of Garrison vs. Summers, 134 So. 675, which I think answers your inquiry fully. My advice to you is to follow this case as it seems to lay down the law on the question here involved very plainly.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Elmore County, Alabama.

Disabled ex-service men not exempt from street tax.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of June 14, 1933, in which you make the following inquiry:

"Please advise us if a disabled ex-service man is exempt from the payment of street tax."

The laws of the State do not exempt disabled ex-service men from the payment of a street tax.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. Walter Green,
Tax Assessor, Chambers County,
LaFayette, Alabama.

The Tax Assessor when sitting as a member of the Board of Review is not entitled to compensation.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 12, 1933, in which you request my opinion as follows:

"Referring to Section 180 of the Revenue Code you will note that the four commissioners together with the Tax Assessor constitute the Board of Review, and by referring to Section 182 you will note that provision is made for compensating the several members of the Board, however, this section isn't clear to me as to whether I am, as Tax Assessor, entitled to the same compensation as the other members of the Board, and will thank you to give me your opinion in this matter."

Section 182, Revenue Laws of Alabama, to which you refer, reads as follows:

"182. Compensation of Board of Review; how paid.—The members of the courts of county commissioners or boards of revenue, or courts of like jurisdiction of the several counties of the State shall receive as members of the Board of Review, the same per diem and paid in the same manner as when sitting at a regular term of such court of county commissioners or board of revenue, when such compensation is fixed on a per diem basis, which compensation shall be in addition to that as now fixed by law, except in counties where such officials are paid a salary."

From the above you will note that this section says among other things: "The members of the courts of county commissioners or board of revenue, or courts of like jurisdiction of the several counties of the State shall receive, as members of the Board of Review," You, as Tax Collector, certainly are not a member of the Court of County Commissioners, Board of Revenue or like governing body which sits with the Tax Assessor as a Board of Review. Therefore, you are not, as such member, entitled to pay.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller
CAPITOL.

Solicitors—Employment of deputy solicitor by county.

Opinion by Assistant Attorney General Screws.

Dear Mr. Hard:

I have your letter of June 19, 1933, in which you request my opinion as follows:

Did the commissioners Court of Winston County have authority of law to enter into a contract in the sum of \$2,000.00 with the Deputy Solicitor of said County in a suit filed against Winston County in the United States Federal Court, involving a bond issue and to pay said Deputy Solicitor the amount stated in the contract and could the Deputy Solicitor being paid a salary by the Court legally receive this additional compensation.

Did the Commissioners Court of Winston County have authority to pay to the Deputy Solicitor of Winston County a fee of \$50.00 for representing the County in a matter of condemnation proceedings for right of way for a highway to be constructed in the County?

I am of the opinion that all of your inquiries should be answered in the negative.

A review of the latest opinions of this office relative to the employment of deputy solicitors by Courts of County Commissioners, Boards of Revenue or other like governing bodies of a county reveals the following:

Deputy solicitor cannot draw pay from county as county attorney.—**Biennial Report of Attorney General, 1928-30, page 295.**

Court of County Commissioners may employ solicitor to represent county in condemnation proceedings, and pay reasonable fee for service.—**Biennial Report of Attorney General, 1928-30, page 374.**

Deputy solicitor cannot receive compensation for his services as advisor to the Court of County Commissioners.—**Book 2, page 169 Off. Ed. of Opinions.**

A firm of which a deputy solicitor is a member cannot be employed by the Court of County Commissioners.—**Book 10, page 294, Off. Ed. of Opinions.**

Deputy solicitor may act as county attorney if he receives no compensation therefor.—**Book 13, page 210, Off. Ed. of Opinions.**

In view of the above opinions and particularly in view of Section 5024, Code of Alabama, 1923, which makes it a misdemeanor for a county officer to take a contract for work or services of the county or to be employed in any way under such contract, I am of the opinion that a deputy solicitor cannot receive additional compensation from the county in any of the capacities set out in your inquiry, the opinion in the Biennial Report of the Attorney General 1928-30, page 374, above cited, to the contrary notwithstanding.

All opinions in conflict with the above are hereby overruled and withdrawn.

Yours truly,

THOMAS E. KNIGHT, JR.,

Attorney General.

July 18, 1933.

Hon. G. L. Malone,
Judge of Probate, DeKalb County,
Fort Payne, Alabama.

Commissioners Court may punish for contempt.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 8, 1933, in which you request my opinion as follows:

"Article 7 of Section 6755 of the Code of Alabama reads as follows:

7. To punish for contempt by fine, not exceeding ten dollars, and imprisonment not exceeding six hours.

"Does this mean that persons may be punished by the Probate Judge as principal Judge of the Commissioners Court while the Court is in session or must the Court as a whole (Judge and all Commissioners) agree on the punishment?"

It is my opinion that in order for the Commissioners Court to punish for contempt, it would require the entire Court's action or at least a majority. I find no authority of law for the Judge of Probate who is designated as the principal judge to inflict this punishment independent of other members of the Court.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. J. M. Grey, Chairman,
Walker County Commission,
Jasper, Alabama.

Courts of County Commissioners—Purchase of typewriters for R. F. C. work.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 18, 1933, in which you state that the R.F.C. department of Walker County have in use six typewriters placed by agents

and some loaned by private parties. You further state that the agents want pay for the typewriters.

You request my opinion as to whether or not the County can legally buy these machines and pay for same with County funds?

I am of the opinion that your inquiry should be answered in the negative. I know of no authority of law that would allow this expenditure of county funds. Whatever power Courts of County Commissions or Boards of Revenue have is derived from the Legislature. They have no inherent or constitutional powers.—Biennial Report of Attorney General, 1928-30, page 645, and cases cited.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1933.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

County Superintendent of Education—Discontinuance of traveling expense allowance.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 3, 1933, together with a letter from Hon. James S. Brown, County Superintendent of Education of Walker County from which the following facts appear:

The salary of the County Superintendent of Education of Walker County was fixed at \$3,600.00 per year and he was allowed a flat traveling expense allowance of \$900.00 per year at the time he was elected to office. At a recent meeting of the County Board of Education of Walker County said expense allowance was discontinued. This is before his present term expires.

You request my opinion as to whether or not this action has the effect of diminishing the salary or compensation of said County Superintendent of Education during the term for which he was appointed or elected within the contemplation of Section 281 of the Constitution of 1901.

I am of the opinion that your inquiry should be answered in the negative.

It is true that the salary or compensation of a County Superintendent of Education cannot be increased or diminished during the term for which he was appointed or elected.—McMurray vs. County Board of Education, 112 So. 644.

It is likewise true there is no authority of law providing a flat traveling expense allowance to County Superintendents of Educations—Woodruff vs. Beeland, 127, So. 275. Biennial Report of the Attorney General 1930-32, page 310.

Therefore, in my opinion, the discontinuance of a traveling expense allowance, which is unauthorized, would not be a reduction of the salary or compensation of a County Superintendent of Education during the term for which he was appointed or elected within the constitutional inhibition. Same is merely taking away from the County Superintendent something that he was not entitled to in the first instance.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 13, 1933.

Hon. T. F. Griffin,
Sheriff, Etowah County,
Gadsden, Alabama.

Intoxicating liquors—Shipment or transportation of beer containing not more than 3.2 per cent alcohol by weight into and through the State of Alabama.

Opinion of Attorney General Screws.

Dear Sir:

I have your letter of June 2, 1933, in which you request my opinion relative to the legality of the shipment or transportation of beer containing not more than 3.2 per cent by weight into and through the territorial limits of the State of Alabama.

Beer, ale, porter, wine, similar fermented or vinous liquor, and fruit juices, containing 3.2 per cent or less alcohol by weight was legalized and declared to be non-intoxicating within the meaning of the Eighteenth Amendment to the Constitution of the United States by an Act of Congress approved March 22, 1933 (U.S.C.A., Title 27).

By Section 64j of the said Act of Congress, said liquors were divested of their interstate character if shipped or transported into a dry state for use in said state, whether in the original package or otherwise. Section 64k prescribes the penalty for the shipment or transportation into a dry state with certain exceptions.

Therefore, in my opinion if said liquors are shipped or transported into the territorial limits of Alabama for use within the State, the prohibition laws of this State would be applicable; but if merely shipped or transported from one wet state to another wet state **through** Alabama, this would not be a violation of the State prohibition laws. The fact that Congress explicitly and only guarded against shipment or transportation **into** a dry state clearly negatives the intention to make illegal the shipment or transportation **through** a dry state. Said liquors were divested of their interstate character only when shipped into and not through a dry state.

"Dry state" as used in this opinion means those states in which the sale, possession, or transportation of beer or other liquors or beverages in question is illegal. "Wet state" as used in this opinion means those states in which same is legal.

As to whether or not the shipment or transportation be through or merely into the territorial limits of Alabama would depend upon the particular facts in each case.

Yours truly
THOMAS E. KNIGHT, JR.,
Attorney General.

July 19, 1933.

Hon. J. H. Hard, Jr.
State Comptroller,
CAPITOL.

Counties—Authority to borrow money.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 5, 1933 in which you request my opinion as follows:

1 Has a Court of County Commissioners any authority of law to borrow money for the purpose of paying warrants issued for operating the County Health Unit, or to pay claims for services of a Farm Demon-

strator, Child Welfare Worker, or Home Demonstration Agent, when there are other registered warrants outstanding to pay, even preferred claims as denominated under section 231 of the Code, and when there are a number of unpaid warrants outstanding and registered against the general fund, registered prior to the warrants for the payment of which money is contemplated being borrowed as first set forth herein?

2. Has the Court of County Commissioners authority to borrow money for the specific purpose of future operations of County Health Unit, Home Demonstration Agent, Farm Demonstration Agent and Child Welfare Worker, and hold said money so borrowed for expenditures for the purpose so expressed, when there are outstanding warrants issued in payment of not only preferred claims but for ordinary claims registered against the general fund?

3. Is not the elected Treasurer of the county liable on his official bond for the payment of money in the Treasury in settlement of a warrant or warrants issued for the purpose or purposes as first stated when there are warrants in payment of preferred claims and other claims against the general fund of prior registration.

4. The Court of County Commissioners being now under individual bonds as required by law, would not they each be liable on their official bonds for borrowing money for the specific purpose as first stated herein and for ordering the payment from the county Treasury of such money so borrowed to the present exclusion of payment from such money of claims of prior registration against the general fund? Would not the Probate Judge for issuing warrants in payment of such claims ahead of claims already registered specifying the particular preferential payment of such warrants, be liable on his official bond for wrongful issuance of such warrants?

5. Has the Court of County Commissioners authority to use one-third of the gasoline tax to retire certain warrants issued and registered against the road and bridge fund of the County, said warrants having been issued in payment of claims for work done on roads and bridges or in connection therewith?

I am of the opinion that your first inquiry should be answered in the negative.

A county has the authority to borrow money, subject to the constitutional limitations, under and by virtue of the provisions of Sections 6776-6788, Code of Alabama, 1923, provided the provisions thereof are complied with strictly.—**Biennial Report Attorney General, 1928-30, page 251.** But this authority in my opinion, does not contemplate the borrowing of money to pay a particular claim or class of claims to the exclusion of other claims of a preferred class. The preferred claims against a county and the order of their priority are set out in Section 231, Code of Alabama, 1923.

I am of the opinion that your second inquiry should, likewise, be answered in the negative.

The authority of a county to borrow money also does not, in my opinion, contemplate the borrowing of money to defray the expenses of a non-essential function of county government when there are outstanding indebtednesses which must be paid in the order of their priority under Section 231. However, the necessary current governmental expenses must first be met before prior incurred indebtednesses can be paid.

In answer to your third and fourth inquiries I am of the opinion that liability would attach on the official bonds of the officers in question for the wrongful expenditures or wrongful authorization of expenditures of public funds.

Enclosed herewith please find copy of an opinion of the Attorney General rendered to the County Treasurer of Lamar County under date of January 23, 1933, which answers your fifth inquiry.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

July 19, 1933.

Hon. I. I. Moses, Chairman,
County Commission of Russell County,
Girard, Alabama.

When no member of the Court of County Commissioners, or other like governing body of the County, is financially interested in a sale of goods or supplies to the County, as principal or agent, the Board is not prohibited from making such sale though a member of the Board may be related to some one who is so interested.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of July 5th. You ask my opinion as to the following:

"Can the County Commissioners of Russell County purchase road supplies or other supplies from a corporation which is owned in full or in part by relatives of the County Commissioners, where the County Commissioners do not own any stock in the corporation and do not have any financial interest?"

In reply will say that the answer to your question is found in Section 5034 of the Code of Alabama. So far as pertains to your question it reads as follows:

"Any Probate Judge * * * members of the Court of County Commissioners, or Board of Revenue, or any other State or County officer * * * who takes any contract* * or sells any goods or supplies to the County, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the County jail, or sentenced to hard labor for the County for not exceeding twelve months; nothing in this Section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

This Section applies to member of the County Commission of Russell County as well as to members of a Court of County Commissioners. The Section of the Code is criminal and, of course, must be strictly construed. The question is whether any member of such Board is pecuniarily interested in any such sale as principal or agent. The fact that he is a relative of one who is principal or agent does not, of itself, make such member financially interested in such sale, and consequently does not, of itself, prohibit such sale. The question is, is such member financially interested as principal or agent. If he is, then the sale is not permissible by the law; if he is not then the sale is permissible so far as this Section of the Code is concerned.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 20, 1933.

Hon. Bradford Cooper,
County Treasurer, Marion County,
Hamilton, Alabama.

Commissioners without authority to charge for repairs and other accessories to their individual cars though operated in the performance of their duties as such.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 14, 1933, in which you request my opinion as follows:

"1. One of our Commissioners has a car and truck:

"He runs this truck for his personal use and also claims he runs it on the road and does not charge for its service but he has lots of repairs on this truck and recently had it overhauled completely and charged all bills to the County. The last bill filed being \$78.74. I have held up this claim for your information or your opinion on the legality of it. This is not a county truck but his own.

"2. Can he charge for repairing his own personal car.

"3. Would it be legal for the commissioners court to furnish gas and oil for their head overseer when he is using his personal car for road services. Can they also keep his car repaired and pay the bills out of the gas fund?

"4. This overseer wants to hire trucks for the county, give them so much a day and furnish gas and oil for same and keep said truck repaired. I hold this is not fair to the county as it gives a person a loophole to tear up his truck in order to have the county repair it. This might cost the county many times the worth of his work.

"5. We had a local law in regard to State witnesses which we paid out of the general funds. Under the General Acts passed last fall did this kill our local law. If so can I set aside all witness cost paid to me by the Circuit Clerk and pay the witnesses in the cases for which it was collected? In Section 3762 and 3769. I put all witness cost in the general funds under our local law and am doing so yet but I do not know whether I can pay witnesses from this fund or not, if I cannot I would like to put the witness cost in a separate fund if I can do so. Please advise me."

My answer to your first inquiry is in the negative. The County could not and should not be required to pay for these repairs.

My answer to your second inquiry is in the negative.

My answer to your third inquiry is in the negative.

My answer to your fourth inquiry is in the negative.

Before I can answer your fifth inquiry as to witness costs, you will have to refer me to your local act to which you call my attention.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 22, 1933.

Hon. J. M. McLeod,
Judge of Probate,
Camden, Wilcox County, Alabama.

Commissioners Courts—Their powers and authority.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 24, 1933, in which you request my opinion as follows:

(1) "In 1932, Standard Oil Company sold Wilcox County considerable gasoline and oil. In 1933, soon after the new members of the Court of County Commissioners of this County took office, the Court of County Commissioners, in the effort to reduce expenses, asked for competitive bids for the selling of gas and oil to the County. Five companies submitted bids, Standard Oil Company submitting its bid through its District Agent, a non-resident of this County. The contract for one year was let to Standard Oil Company and Gulf Refining Company, they being the lowest bidders, and their bids being the same. One of the members of our County of County Commissioners, who took office in January, 1933, is now and has been for several years local agent in this County for Standard Oil Company. Is this contract legal, and is said member of our Court of County Commissioners who is also local agent for Standard Oil Company liable in any way, under the above set out state of facts?

(2) Has the Court of County Commissioners the legal authority to employ an Attorney, other than the County Solicitor, to advise and represent it?

(3) Is it legal for our Court of County Commissioners to employ a brother of one of the member as a road overseer, the minutes of said Court reciting that the member who was a brother did not vote at all when the question was up for decision?

(4) Is it legal for the Court of County Commissioners to put on its minutes an order authorizing its members to perform extra road service for not exceeding ten days out of each month, at the rate of compensation of \$3.00 per day and five cents per mile for each mile traveled, and can I legally draw warrants for such compensation and mileage, or either, after such claims have been duly allowed by the Court?

(5) Can the Court of County Commissioners legally order the registration books opened for registration of voters at any time prior to the election to be held in July, 1933?

(6) In January, 1933, the following order was placed on the minutes of the Commissioners Court: 'It is hereby ordered by the Court that Miss Gussie Jones be and she is hereby appointed as Clerk of the Commissioners Court of said County at a salary of \$35.00 per month, payable monthly.' Is said order legal? Or would it be legal if she were elected Clerk charged with the special duty of all clerical work in connection with roads and bridges in this County?

It is my opinion, taking the facts as stated in your first inquiry, that the Court of County Commissioners could accept this bid and award the contract to such oil company provided, however, the member of the Court of County Commissioners who was the agent of the company did not sit with the Court at the time of making this contract and had no part in the awarding of the same.

Answering your second inquiry, your Court of County Commissioners may employ an attorney to represent the county under subsection 21 of Section 6755, Code of Alabama, 1923, and also under subsection 8 of Section 5498, Code of Alabama 1923.

My answer to your third inquiry is in the affirmative.—See *Garrison vs. Sumners*, 134 So. 673.

My answer to your fourth inquiry is in the affirmative.

My answer to your fifth inquiry is in the negative.

In answer to your sixth inquiry, will say that this employment can only be in connection with the building, repairing and maintenance of public roads and this must be strictly adhered to.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 21, 1933.

Hon. Wm. F. Feagin, Director,
Board of Administration,
CAPITOL.

Judge of a Circuit Court is without power to parole a convict after sentence has begun.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 29, 1933, in which you request my opinion as follows:

"Under date of February 10, 1933, one James Duncan was convicted of manslaughter first degree in the Circuit Court of Tuscaloosa County, Tuscaloosa, Alabama, and was sentenced to a term of one year and one day, but the Judge of the Circuit Court of Tuscaloosa County, Tuscaloosa, Alabama, saw fit to have an order drawn, paroling this defendant after he had served six months of this sentence.

"I am requesting your opinion as to the term this man should be required to serve in the penitentiary; for example, should he be released at the expiration of the six months of servitude, or should he be released at the expiration of the sentence of one year and one day?"

"For your information a copy of the transcript in this case is herewith attached."

In answering your request, it is my opinion that the Judge of the Circuit Court of Tuscaloosa County is without authority to parole or pardon a convict after sentence has begun. This power belongs to the Governor of the State and no other. I call your attention to Section 5127, Code of Alabama, 1923, which is as follows:

"5127. Power of Governor to pardon; entry and attestation of pardons.—In all cases except treason and impeachment, the Governor has power, after conviction, and not otherwise, to grant reprieves, commutations, paroles and pardons, and to remit fines and forfeitures and he must cause to be entered, in a book kept for that purpose, his reasons therefor, and must preserve on file all documents on which he acted; and it is the duty of the Secretary of State to attest the reprieve, commutation, or pardon, when granted."

When a prisoner is delivered to and accepted by the State he must serve the full sentence imposed unless he is pardoned or paroled by the Governor as prescribed by Section 5127, *supra*.—73 Ala. 517. It is true that under an Act approved July 14, 1931 (General Acts, 1931, p. 444), a judge may suspend a sentence or grant probation, but this must be done before the convict is delivered to the State to begin his sentence. When once in the penitentiary there is no power that can release him before he serves his full sentence save the Governor under the law referred to above.

If a judge of a circuit court should sentence, as in this case, a man to one year and one day in the State Penitentiary, and make a further order that after serving six months the defendant be paroled, etc., such an order, so far as it relates to the parole, is without authority of law and, therefore, void,

and the Convict Department should hold the defendant, unless paroled by the proper authority, which is the Governor, to serve his full and complete sentence.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 24, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

1. Where Tax Collector, under color of his office, has knowingly collected a fee from a taxpayer that he is not entitled to, he makes himself liable to such taxpayer for four times the amount so illegally collected.

2. To free himself and bond from such liability he must arrange the matter satisfactorily with such taxpayer.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of May 16th you make the following statement as facts: A tax Collector during a certain period of his term of office illegally collected as fees due him from taxpayers sums amounting in the aggregate to \$588.55. This money is not due the State of Alabama; but the persons from whom he collected it.

You ask:

1st. Shall the Tax Collector be required in discharge of his liability on his official bond to pay the fees in his hands, illegally received by him, to the County Treasurer, subject to the demand of the various persons interested?

2nd Does Section 10459 of the Code of Alabama apply?

3rd. If the Tax Collector is not required to pay to the County Treasury such amount, and having demanded and received money as fees other than provided by law, which he now knows, and in some instances not being informed of the present place of living or postoffice address of the parties in interest, in what way may he discharge his liability and avoid possible penalty under Section 7269 of the Code of Alabama?

4th The collection of such fees having occurred in the Probate Court in proceedings to sell land for taxes, could the Collector discharge his liability, by paying back into the hands of the Probate Judge the fees illegally received by him, for disposition by the Probate Judge under the provisions of Section 10455 of the Code of Alabama?

In reply to your questions will say that there is a special statute to provide for such a contingency. The State nor County is interested in protecting a Tax Collector in the violation of law. The Legislature has given a legal right to the person so wronged, if he desires to pursue it. The State nor County is, in any way, interested in such money, and the Legislature has provided no way for the State or County to handle it. By Section 7269 of the Code it has provided a remedy for the person wronged, if he desires to take advantage of it. This section reads as follows:

"Any officer authorized by law to take fees who knowingly receives any other or higher fees than are prescribed by law, is liable to the party aggrieved for fourfold the fees so received, to be recovered in any Court of competent jurisdiction."

A Tax Collector who demands and receives fees for doing something that he knows he has not done, cannot, in my opinion, claim ignorance of the law. As said by our Supreme Court in the case of Mobile County vs. Williams, Judge, 180 Ala. 647:

"A person claiming fees or costs must point to the definite law authorizing it; the law will not be extended beyond its letter; the law imposes duties upon public officers without providing compensation therefor.

"An officer demanding fees for services rendered must point to some clear and definite provision of the statute which authorized the demand, the compensation cannot be allowed unless it is conferred by a strict construction of the language employed in the statute."

Section 7255 of the Code of Alabama provides:

"The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law."

The Tax Collector, in the case stated by you cannot, in my opinion, claim that he did not knowingly receive fees other than prescribed by law; but it is upon the Tax Collector to see that the claims of the parties from whom he has received the fees are satisfied, or else he is liable for fourfold the fees illegally collected by him, if demanded by such person.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 28, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Under Section 40 of the General Appropriation Act approved November 9, 1932, the appropriation for the payment of court costs previously provided for is repealed.

Where suit is instituted by the State at the instance of the State Tax Commission or the Governor, if deemed advisable the costs can be paid out of the appropriation to the Tax Commission or out of the Governor's Contingent or Emergency Fund.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 24th with reference to certain cost bills which have been filed against the State. In this letter you call my attention to the Appropriation Act approved November 9, 1932, Acts 1932, pages 321-331, in which it is provided by Section 40 that all appropriations definite, indefinite and contingent in amount with certain exceptions specifically stated, are repealed. You ask me if the cost bill in the case of State of Alabama vs. Atlantic Coast Line Railway can be paid.

It is my opinion that as this was a suit filed at the instance of the State Tax Commission that the same can be paid out of the appropriation for the expenses of the State Tax Commission. In the enforcement of the revenue laws, litigation and the expenses therefor, are necessarily included and where suit is brought at the instance of the tax authorities I am of the opinion that if there are sufficient funds in the appropriation that a cost bill of this sort can be paid.

With reference, however, to the numerous tax appeals which are now being brought, it seems that there is no appropriation for the payment of costs even though the Court may possibly apportion the costs to the State. There is of course no legal method of collecting the same and in the absence of a legislative appropriation the same cannot be paid by the State.

Where the suit is instituted at the instances of the State Tax Commission or the Governor, I am of the opinion that if deemed advisable the cost can be paid either out of the Tax Commission appropriation or the Governor's Contingent or Emergency Fund.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 29, 1933.

Hon. R. L. Shamblin, Sheriff,
Tuscaloosa, Tuscaloosa County, Alabama.

Pay of Sheriff for removing prisoners under order of Court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 27, 1933, in which you request my opinion as follows:

"A few days ago I had a mob to come to my jail for some negroes. I heard about it before they came and the Judge ordered me to carry them to Birmingham for safekeeping.

"Who is liable for the cost of removal in this case?"

I call your attention to Section 3741, Code of Alabama, 1923, which reads in part as follows:

"For removing any prisoner in cases where there is no jail in the county in which the offense is committed, or the jail therein is **insecure**, to the jail of another county, and for returning him to the jail of the county from which he was removed or to court for trial, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners, while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be taxed against, and paid by such prisoner, on conviction, or if he is insolvent, or is acquitted, by the county in which the offense was committed; but in no case shall the county to which such prisoner was removed be liable for such costs or fees."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 31, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Certain fees of Clerks of Circuit Courts are not affected by Section 281 of the Constitution of 1901.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 15, 1933, in which you request my opinion as follows:

"Will you give consideration to the following statement of facts and advise as to the question asked?

" 'Section 4039, Code of 1923, was amended February 18th, 1927, General Acts 1927, page 45. This Section was amended so as to include the payment of certain fees, etc., from the Fine and Forfeiture Fund that prior to the passage of said amended Section the Clerk did not collect as the State was the unsuccessful party and the State pays no officer's costs. The fees etc., referred to, are those of officers arising on an appeal by the Defendant to the Supreme Court or Court of Appeals in cases where the judgment of the trial court is reversed and a new trial allowed, or the Defendant ordered discharged, at the time this Section was amended the Circuit Clerks, holding office, were elected, and took office in 1923, which term expired in January, 1929. Section 281 of the Constitution provides that the salary, fees or compensation of an officer shall not be increased or diminished during the term for which he is elected or appointed.

"Would the Clerk of the Circuit Court, taking office in 1923 for a term of six years be entitled to fees from the Fine and Forfeiture Fund arising on an appeal to the Supreme Court or Court of Appeals in cases where the judgement of the trial court was reversed and a new trial ordered, or the Defendant ordered discharged?"

It is my opinion the Clerk would be entitled to such fees as this amendment to Section 4039 did not create any new fees or compensation for clerks of circuit courts but directed how fees already created or fixed should be paid. Therefore clerks such as you refer to, would not be abridged by the provisions of Section 281 of the Constitution of 1901, which is as follows:

The salary, fees or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

A change in the method of fixing and collecting fees is not an increase in compensation within the contemplation of the above quoted constitutional provision.

Biennial Report of Attorney General, 1918-1920, p. 375.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 31, 1933.

Hon. R. T. Simpson, Jr.,
Solicitor, Eleventh Judicial Circuit,
Florence, Alabama.

County can legally pay for chemical analysis of alleged prohibited liquors.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of July 20th, 1933 in which you request an opinion of this office as to whether or not the county can legally pay for the services of a chemist to analyze certain beverages to determine their alcoholic content.

Recent State and Federal legislation has brought about a situation in the persecution of V. P. L. cases which did not previously exist.

Prior to the passage of the Edgar Near Beer Law in 1932 legalizing the sale of malt beverages containing not more than one-half of one per cent alcohol, the state could make out a prima facie case by showing that the beverage alleged to have been sold, manufactured, possessed, etc., in violation of law, possessed the same color, order and general appearance, or the same taste, color and general appearance of whiskey, rum, gin, and the like.—Section 4650, Code of Alabama, 1923.

This rule of evidence can hardly be applicable as the law now exists, therefore, it is incumbent upon the state, if it intends to prosecute those persons possessing, selling, etc. 3.2 per cent beer (now legalized by the U. S. Government) to prove that the beverage contains more than one-half of one per cent alcohol.

I am, therefore, of the opinion that Sections 10190 and 10191 authorize the counties to pay for such chemical analysis.

Section 10190, is as follows:

"The sheriffs in their respective counties whenever directed to do so in writing by such solicitors or any of them, or by the attorney general or governor, shall make special investigation of any alleged violation of the law in their counties and shall prepare a written report setting forth what information has been obtained as a result of such investigation together with the names of such witnesses as have been secured with a summary of what can be proven by such witnesses, which report shall promptly after its preparation be presented to the solicitor who directed the investigation and in the latter event the governor or attorney general may present it to any solicitor prosecuting criminal causes in the county. The sheriff of the county shall proceed promptly by himself or by a competent deputy of experience and fidelity to make such investigation when directed as aforesaid.

Section 10191 provides how the expenses of such investigations shall be paid.

"The expense of such investigation when so ordered shall be paid from the county treasury, upon a warrant properly drawn; and after the report is made the sheriff shall file with the board of revenue or court of county commissioners a detailed sworn statement of his expenses accompanied by the written approval of the officer directing the investigations, and the board of revenue or court of county commissioners shall audit and allow only so much thereof as it shall find reasonably necessary unless it is approved by the governor or attorney general, in which event they shall allow the amount approved.

I am confident that such an investigation mentioned by you was contemplated by the Legislature in view of the fact that Section 10192 provides as follows:

"The sheriffs shall diligently and promptly discharge all duties imposed upon them by all laws of the state for the promotion of temperance and the suppression of the evils of intemperance and by the laws regulating the conduct of the retail beverage business, and shall promptly perform every act which laws direct or require them to perform.

The three provisions above quoted are not codified as separate code sections but they were all a part of the same act of the Legislature (General Acts 1901, page 107). This fact convinces me that the legislature contemplated that such investigations as mentioned by you should be conducted and in the manner provided by statute.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 1, 1933.

Hon. C. S. Culver,
Member of the Legislature,
Gadsden, Alabama.

The words "public waters" as used in Section 4 of Act No. 72, approved March 18th, 1932, is confined in its meaning to the purposes of said Act and must not be construed as intending to take away vested rights of lands over which such waters are or flow. Such a meaning would render the statute unconstitutional and hence, void.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of July 21st to hand. You ask my opinion as to the constitutionality of Act No. 72, approved March 18th, 1933, particularly as to that Section which defines public and private waters. The Section referred to is Section 4 of said Act, and reads as follows:

"All waters of this State are hereby declared to be public waters if such waters of any river, creek, lake, brook, bayou, bay, channel, canal, lagoon or other body, traverses, bounds, flows upon or through, or touches lands title to which is held by more than one person, firm or corporation. Any water impounded by the construction of any lock, dam or other devices used for impounding water, and placed across the channel of any public waters, as defined in this section are hereby declared to be public waters. Private waters are for the purpose of this Act defined as any body of water wholly on lands held in fee or in trust, or under lease, by any one person, firm, or corporation; provided, however, that this section shall not apply to a branch or other body of running water, which has at its normal stage or flow insufficient volume of water to maintain fish protected by the provisions of this Act. Provided further that before any person may go or be upon the posted lands of another for the purpose of fishing he or she shall procure the consent of the landowner or his agent."

In reply will say that in my opinion the statute when construed as the Legislature intended it should be construed, is constitutional. If the words "public waters" as used in the Act is construed as having the effect of taking away from the owners of the land vested rights, then such construction would make Section 4 of the Act unconstitutional.—**Coosa River Showboat Co. v. Barclay**, 30 Ala. 120.

Certain waters are declared by the Act to be "public waters" and certain waters are declared by the Act to be "private waters", simply for the purposes of the Act. All the purposes of the Act are with reference to fish, which, in the case of fish in what is termed in the Act as "public waters," pass, or may pass, up and down the stream. The title to the fish in such

waters is not in the person who happens to have the legal title to the land over which the waters flow. The Legislature had complete authority to declare that the title and ownership of such fish are vested in the State and to fix rules and regulations as to anyone catching them and thereby obtaining title and ownership to such fish.

Where one person owns the land on one side of a creek or branch and another person owns this land on the other side of such creek or branch, the creek or branch being the line between them, the center line of the creek or branch is the dividing line and each owns to such line on his side and has vested rights in the bed of the stream and also with reference to the water over such bed. To go or be upon such waters is to go or be upon the lands of the person owning the same. The last sentence of said Section 4 provides:

"Provided further that before any person may go or be upon the posted lands of another for the purpose of fishing he or she shall procure the consent of the landowner or his agent."

When a person goes upon or is upon the water of a stream that is not a navigable stream, he is upon the land of the owner of the bed of the stream. The fact that for the purposes of said Act No. 72 the waters flowing through such land are denominated for the purposes of the Act "public waters" is immaterial so far as the right to fish in such waters is concerned. This was clearly the intention of the Act as shown by the last sentence of Section 4 already quoted and copied. A person to fish in such waters, where the stream is not navigable within the legal sense of the word "navigable", and the land is posted must first obtain the consent of the landowner or his agent authorized by the landowner to give permission. "Public waters" within the meaning of this Act does not mean waters upon which the public may go or be without permission of the owner, where the stream is not navigable. Where a portion of a stream is ponded the pond having an outlet, the same rule applies. In order for anyone other than the owner of the lands on which the pond is, to fish in such pond, or go or be upon the pond, if the land which includes the pond, is posted, such person must first obtain the consent of the landowner or his agent duly authorized to give such consent.

The opinion of this office of date July 10, 1933, is hereby withdrawn.

Yours very truly,
THOMAS, E. KNIGHT, JR.,
Attorney General.

August 2, 1933.

Hon. Sam Drinkard,
Sheriff, Marengo County,
Linden, Alabama.

Seizure fee in distilling or possession of a still case.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 5, 1933, in which you request my opinion as follows:

"Please inform me when the law reducing the seizure fee for convictions of manufacturing liquors and the possession of stills from \$35.00 goes into effect. Does this law affect cases where defendants were arrested before said law was passed. Should claims be filed just as before in order to get fees in such cases or will it be necessary to make affidavit as to when still was captured or arrest made for manufacturing whiskey."

I have before me a copy of the Act to which you refer, viz., Senate Bill No. 112 by Hooton. I note that this bill has the following provision: "Provided further, after this Act becomes effective, that only one such amount shall be paid under this section for a conviction of any number of persons, more than one, for a violation of either of said referred to Sections where the evidence shows that the still, apparatus or appliance, is one and the same." It further provides: "That from and after the second Tuesday in January, 1935, the sum so paid under this Section shall be limited to twenty-five dollars."

It is my opinion that even though a still, apparatus or appliance was captured before the passage of this Act that if the party was convicted after the passage or approval of this Act, the Act would govern and you could only collect \$35.00 for any one still regardless of the number of persons convicted for operating the same, and that after the second Tuesday in January, 1935, you could only collect \$25.00.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 19 1933.

Hon. R. S. Jeffcoat, Member,
Covington County Board of Revenue.
Opp, Alabama.

Under Section 175 at page 396 of an Act of the Legislature of Alabama approved August 23, 1927, a Court of County Commissioners, may, with the approval and permission of a municipality, established or contract or maintain any road, street or bridge within the corporate limits of such municipality, except in cases where the State Highway Commission has jurisdiction over such road, street or bridge.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of March 27th has been received. Your letter follows:

"Please observe Section 175, Article IV, 1927 Acts of Alabama, page 396, giving county commissioners the right to maintain roads in municipalities, and answer the following questions, please:

"(1) Does this section authorize and empower the Board of Revenue of Covington County, Alabama, to maintain the streets of the City of Opp that are already constructed and established as a part of our municipal streets and roads, or is this authority and power to maintain confined to streets and roads established and constructed by the County but within the municipality? This question is based upon the assumption that the City Council gives their permission.

"(2) If your answer to the above question is in the affirmative, then what jurisdiction would the Board of Revenue have over such streets and roads as it maintains?

"(3) Would said Board of Revenue under this Section have authority to build a bridge within the corporate limits of such city over or across a street that already forms a part of the municipal system of streets and roads?

Section 175 at page 396 of an Act of the Legislature of Alabama, approved August 23, 1927, provides:

"Section 175. ROAD IN MUNICIPALITIES. The court of county commissioners or like governing body of any county with the consent or permission of the city council or governing body of any municipality, may establish, construct and maintain any road, street or bridge within the corporate limits of such municipality, except in cases where the state highway commission has jurisdiction over such road, street or bridge."

My understanding of the meaning of the above quoted section is this: With the permission and consent of a city council, a court of county commissioners may establish or construct or maintain any road, street or bridge within the corporate limits of a municipality. The section does not refer to roads, streets or bridges constructed through municipalities by the State Highway Department, and which roads are maintained by the State Highway Department.

The section is intended to provide aid and assistance for municipalities in cases where an agreement can be reached between the municipality and the county. Generally speaking, the roads, bridges and streets within a municipality are controlled by the municipality and it would be unthinkable to allow a county to maintain or construct or establish streets, roads and bridges in a municipality without the consent and permission of such municipality. On the other hand, under certain conditions a municipality would welcome the help and assistance of the county.

The county has the authority under this section, with the permission of the municipality, to establish, construct and maintain, but this does not mean that the county would not have authority, with the permission of the municipality to maintain such a road, bridge or street in a municipality already established or constructed by the municipality. The authority to establish, construct and maintain certainly includes the lesser authority and power to maintain after construction or establishment. I think under this section, with the permission of the municipality, the county may establish any road, bridge or street, or construct any road, bridge or street or maintain any road, bridge or street within such municipality.

As regards roads or streets or bridges that have been constructed by the Highway Department, and which are maintained by the Highway Department, such roads, streets and bridges are already maintained by the State Highway Department, and there would be no need for any maintenance or assistance or help from the municipality or the county, hence, such roads, streets and bridges are excepted from the influence and operation of this section. With the permission of the municipality, the county would have the authority to establish, or maintain or construct any road, street or bridge within the corporate limits of a municipality.

The authority on the part of the county to maintain is not confined to streets and roads established and constructed by the county within a municipality. Neither does the section mean that, when a county establishes or maintains or constructs such a road, street or bridge, the county has exclusive jurisdiction over such maintenance, or construction or establishment. It may be that a county, after getting the permission of the municipality, might maintain a road in a satisfactory manner for six months but after that time the maintenance of the municipal road by the county would be of a very shabby and unsatisfactory nature. Under these conditions it could not be said that the jurisdiction of the county over the road is such as to deprive the town of the right to maintain its own road within its corporate limits. It must be borne in mind that generally speaking, the roads, bridges and streets

within the corporate limits of a municipality belong to and are controlled by such municipality. The power, authority and jurisdiction of such a municipality in this regard are inherent.

This law permits the county, under certain conditions, and with permission of the municipality, to assume a certain limited jurisdiction over the streets, bridges or roads of a municipality. The jurisdiction conferred on the county is a limited jurisdiction. In the event of any conflict between the jurisdiction of the county and the municipality, as regards maintaining or constructing or establishing roads, bridges or streets, within the corporate limits of a municipality, the jurisdiction, power and authority of the municipality would be controlling. This section does not intend to divest the municipality of any of its jurisdiction over its streets, roads or bridges in the matter of maintaining or constructing or establishing such roads, streets or bridges.

The section is intended to be a help and assistance to the municipality and not a handicap or hinderance. The question of jurisdiction relates only to jurisdiction as to maintenance or construction or establishment and no other question of jurisdiction is involved.

The section undoubtedly authorizes the county or board of revenue to build a bridge within the corporate limits of such city over or across a street that already forms a part of the municipal system of streets and roads, provided the bridge does not fall within the exception set out in the section. The fact that such a bridge forms a part of the municipal system of streets and roads is immaterial, if such streets or roads do not fall within the exception mentioned in the section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 24, 1933.

Hon. W. D. Bishop, President,
County Commissioner, Jefferson County,
Courthouse,
Birmingham, Alabama.

Construing Section 31 of the State Highway Code, Acts 1927, page 348.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of July 28th has been received. Your letter follows:

"In a suit recently tried in the Circuit Court of Jefferson County, Alabama, a judgment was obtained by A. O. Harrell against Landon G. Smith, Robert D. Jordan and William Herzberg, all employees of the State of Alabama in its Highway Department, in the sum of \$1,000 and court costs, based upon the construction under the supervision of the individuals named of a highway known as F.A.P. 203 leading from Birmingham to Leed, Alabama.

"The basis of the complaint was that the individuals named in connection with the construction of said highway diverted the channel of the creek formerly running through the plaintiff's property with resultant damage to the plaintiff.

"Prior to the diversion of said creek, the Assistant County Engineer of Jefferson County, Alabama, advised the said William Herzberg, who was then Division Engineer of the State Highway Department of the State of Alabama, by letter as follows:

" 'Dear Sir:

F.A.P. 203—Leeds,

Beg to advise that the right-of-way for the channel change across Poole property near Leeds has been secured and it is all right for you to begin construction on this work.

Yours truly

H. C. CULVERHOUSE,
Assistant County Engineer.'

"Acting on the authority of this letter, the individuals named in their capacity as representatives of the State of Alabama in its Highway Department caused the channel of said creek to be changed so as to make the same lie entirely within the boundaries of the lands of H. B. Poole leaving the lands of A. O. Harrell untouched by said creek. The individuals against whom said judgement was rendered acted upon the foregoing letter in causing said creek to be diverted and without information of any kind that the proper conveyance and release had not been obtained from the said Harrell.

"The County Commission of Jefferson County has been asked to pay this judgment or whatever amount may be necessary to procure a release and satisfaction thereof.

"**Query:** Can I as President of the County Commission of Jefferson County charged by law with the duty of signing all orders for the payment of moneys belonging to Jefferson County, legally draw warrant on the County Treasurer of Jefferson County for the payment of

such amount as may be necessary to procure the satisfaction of said judgment if a resolution authorizing the issuance of such warrant be duly and regularly adopted by the County Commission of Jefferson County?"

You inquire whether or not you, as President of the County Commission of Jefferson County, have authority to draw a warrant in payment or settlement of a judgment obtained against employees of the State Highway Department, as individuals, for damages assessed by a jury against them for constructing a road and channel changed on F.A.P. 203, in Jefferson County, pursuant to advice from the County Engineer that the requisite right of way had been obtained.

In reply, I beg to advise you as follows: The road known as F.A.P. 203, Jefferson County, was constructed with the aid of Federal funds under the State Highway Code. Section 31 of the State Highway Code provides:

"Section 21 (1331). RIGHT OF WAY FOR ROADS: HOW ACQUIRED. The right of way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the County in which such road is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right of way, the State through the State Highway Department shall have authority at the expense of the county to acquire such right of way either by purchase or by the exercise of the right of eminent domain in condemnation proceedings, as is provided for under the laws of this State."

In this connection, I beg to call your attention to the recent case of Mobile County vs. Barnes-Creary Supply Co., 225 Ala. p. 127; 142 So. p. 72. In this case the Supreme Court has the following to say:

" the express provision of Section 31 of the General Act above noted (General Acts 1927, p. 358) to the effect that as to such improvements the duty rested upon the county to acquire the right of way deemed necessary for the purpose without expense to the State and that in the event the county fails or refuses to do so, the state may acquire the same either by purchase or by condemnation proceedings, at the expense of the county. The duty, therefore, was upon the county to acquire the right of way. . . . Confessedly also the actual work was under state supervision, but the foundation duty of obtaining the right of way rested upon the county, a party to the project, and the county cannot escape responsibility for failure on its part." (Underscoring ours)

The duty and obligation of the county to acquire the right of way and the alternate remedy of the State to acquire it at the expense of the county seems amply clear. In the situation set forth in your letter the county failed to acquire the required right of way although its duly authorized officer certified that it had, and the assessment of the damage by the jury may be con-

sidered as analogous to the assessment of the value of the land taken in what would have been a condemnation proceeding .

Jefferson County is still under the duty to acquire this right of way. If the individuals against whom the jury assessed damages pay the judgment they will acquire title and it would still be the duty of the county to acquire it.

The county has received and is receiving the full benefit of the land taken. The State officers took it upon the county's assurance that it had been acquired. This assurance has proved erroneous. The county's duty to acquire the property of which it now has the use and benefit still remains.

It is my opinion, and I so advise you, that you are authorized to draw the county's warrant to pay or settle this judgment and the costs thereof.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 18, 1933.

Hon. H. H. Montgomery,
Superintendent of Banks,
CAPITOL.

Alabama Building and Loan Associations are authorized in law to invest their funds in the securities of the Home Owners Loan Corporation, created by Congress on June 13, 1933.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of July 25th has been received. Your letter follows:

"Will you please advise me if Building and Loan Associations operating in this State under the Act approved April 9, 1931, have authority to invest their funds in the securities of the Home Owners Loan Corporation, created by the Act of Congress approved June 13, 1933?

"Under Section 9—subsection 8 of the Act approved April 9, 1931, it provides that among other things an Association is authorized to borrow money, to execute negotiable notes and other evidences of indebtedness. However, under this same section—subsection 9 states that the funds of an Association, in addition to being loaned on first mortgages, its shares and certificates, may deposit its funds in banks or invest in the bonds of the State of Alabama, or in municipal bonds, or in other securities au-

thorized by the laws of Alabama for the investment of trust funds. The Home Owners Loan Corporation being a creation of Congress organized for the purpose of aiding Building and Loan Associations contemplates that among its functions, will exchange or trade its bonds or obligations to Building and Loan Associations for its mortgages.

"Under an Act passed by our Legislature and approved October 14, 1932 Associations were authorized to become members of the Federal Home Loan Bank System, created by an Act of Congress at its first session of the seventy-second Congress, or as the same may be subsequently amended and shall have power to borrow from the Federal Home Loan Bank and pledge, discount or assignment of their securities, notes and mortgages to the extent permitted by the said Federal Home Loan Bank and to invest in the securities of said Federal Home Loan Bank.

"The Home Owners Loan Corporation is a corporation created under the authority of Congress to aid Building and Loan Associations operating in various States of the Union."

You inquire whether a Building and Loan Association organized under the laws of this State has authority to invest in the securities of the Home Owners Loan Corporation, created by an Act of the Federal Congress, approved June 13, 1933.

It is my judgment that such Building and Loan Association has such right.

On July 22, 1932, the Federal Congress passed what is known as the Federal Home Loan Bank Act. This created the Federal Home Loan Bank Board and provided for the creation of the Federal Home Loan Bank, which is defined in the Act to mean: "A bank established by the Board under authority of this chapter."

The Act of the Federal Congress of June 13, 1933, is clearly, as it declares in its title, an amendment of the Federal Home Loan Bank Act. It empowers the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act, to create a corporation known as the Home Owners Loan Corporation. It repeals the provision in the original Act for direct loans to home owners, and empowers the Home Owners Loan Corporation to make such loans. The effect of the Act of June 13, 1933, is to extend the powers of the Federal Home Loan Bank Board through an additional corporation to be created by it, over and beyond the powers it was authorized to exercise under the Federal Home Loan Bank Act.

An Act of the Legislature of Alabama, approved October 14, 1932, empowered Building and Loan Associations in Alabama to become members of the Federal Home Loan Bank System, created by an Act of Congress enacted at the first session of the 72nd Congress, "or as the same may be sub-

sequently amended," and gave them power to borrow from said Federal Home Loan Bank and to invest in the securities of said Federal Home Loan Bank.

The clear intent of the Act of the Legislature of Alabama, approved October 14, 1932, was to confer upon Building and Loan Associations in this State full and complete authority to take advantage of all the benefits that might exist under the Federal statute as it then existed, **or as it might subsequently be amended.** It gave power to these Associations to become members, not of the Federal Home Loan Bank, but of the Federal Home Loan Bank System, as it then existed, or might subsequently be enlarged, and, to borrow from and invest in the securities of said Federal Home Loan Bank. The use of the words "said Federal Home Loan Bank," the Federal Home Loan Bank **System** being theretofore only mentioned, shows that the words, "Federal Home Loan Bank" were not designed to restrict the power of Building and Loan Associations to borrow from or invest in the securities of, the one corporation then existing, but that the term "Federal Home Loan Bank," was used as synonymous with or meaning the same thing as Federal Home Loan Bank **System**," and intended to include any securities that might then, or hereafter, be available for investment under the **system** which this Act dealt with.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

September 19, 1933.

Hon. C. C. Hart,
Tax Collector of Covington County,
Andalusia, Alabama.

Cotton grown during the year 1931 and still in the hands of the producer thereof, or his landlord, is not subject to taxation.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of August 23, 1933, was duly received. You request my opinion:

"When would cotton that was grown in the year 1931, and yet in the hands of the producer become liable for assessment, and at what value should it be assessed if it is an escape? Should it be assessed at the value of October 1st or at the value at the time the assessment is made?"

"Would the cotton have to be assessed although it was not liable for taxes, the same as household goods and other things that come under the head of exemptions."

In reply will say that, in my opinion, cotton and other agricultural products were not subject to the proviso in the last clause of subdivision (g) of Section 2 of Act No. 172, approved August 22, 1923 (Acts, 1923, p. 154) So far as I am aware no Tax Assessor, or Board or Commission has ever construed said proviso as applying to cotton or other farm products.

Said subdivision (g) reads as follows:

"All cotton or other agricultural products which have been raised or grown during the current or preceding calendar year, and which shall remain in the hands of the producer thereof, or his landlord, or in the hands of the purchaser purchasing the same for prompt shipment; all cotton or other agricultural products in the hands of the manufacturer which have been produced in the State of Alabama during the current calendar year; provisions and supplies on hand for the current year for the use of the family and the making of the crop; all wearing apparel; farming tools to the value of one hundred dollars; tools and implements of mechanics to the value of one hundred dollars; and the following property to be selected by the head of each family and not to exceed in the aggregate one hundred and fifty dollars; namely, cows, calves, hogs, sheep, household and kitchen furniture and sewing machines; provided that no property or subject of taxation mentioned in this subsection shall be exempt from taxation, nor shall any credit, abatement, or reduction be allowed therefrom unless such property or subject of taxation is entered by the taxpayer upon an assessment list and returned by him under oath to the tax assessor."

It will be noticed that the proviso says: "provided that no property or subject of taxation mentioned in this subsection shall be exempt from taxation" etc. The word "or" in this clause followed by the words "subject to taxation" was intended, in my opinion, to be simply explanatory of what was meant by the preceding word "property".—Corpus Juris, Vol. 46, page 1125, Section 4. Webster says, "the conjunction or is often placed between different terms expressing the same thing or idea; as this is a sphere or globe."—State vs. Vandiver, 213 Mo. 187, 210; Park College v. Attorney General, 228 Mo. 514. Cotton or other agricultural product has not been a subject of taxation in the year which it is grown, or in the subsequent year in a great many years, if ever, in the State of Alabama. The consequence is that the matter of listing mentioned in said subsection (g) had no reference to cotton or other agricultural products in the hands of the producer or his landlord, the year grown or the subsequent year, or to wearing apparel, as neither of them were subjects of taxation. They were each property, but not subjects of taxation.

It follows that cotton raised or grown in the year 1931, while in the hands of the producer or his landlord did not become assessable in the year 1931 or the year 1932 under said subdivision (g). It, therefore, would have become assessable October 1, 1933, but for Act No. 16, approved February 24, 1933, which exempted such cotton from taxation for all times, as it had not become assessable before the Act was passed.

It will be observed that Section 2, of Act No. 172, approved August 22, 1932, deals with exemptions from taxation and not with the subjects of taxation. Farm products while in the hands of producers have not been made a subject of taxation. Under the "Subjects of Taxation" Section 2 of Act No. 328, approved September 15, 1919, we find the following proviso:

"Provided that the assessment herein provided for shall not include products raised on the farms in the hands of the original producers."

Of course, cotton is a product raised on the farm, and, in my opinion, it has never been the intention of the Legislature to tax it while in the hands of the producer.

Would anyone contend for a moment that all wearing apparel must be listed on the assessment list in order to be exempt from taxation. It is not a "subject of taxation" under the laws of Alabama. Would the failure to list them make them a subject of taxation. The statute says "property or subject of taxation." It has no reference to property not a "subject of taxation."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 20, 1933.

Hon. J. F. Posey,
Judge of Probate, Autauga County,
Prattville, Alabama.

Redemption by mortgagee or purchaser of land sold to an individual at tax sale as provided by Section 3109 of the Code of Alabama.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of September 20th to hand. You make the following statement of facts:

A body of land was duly assessed for taxes, to the owner for taxes payable October 1st, 1930 and delinquent January 1st 1931. During the

year 1931 the land was regularly sold for taxes under a decree of the Probate Court; and, at the sale, it was purchased by an individual to whom a certificate was duly issued by the Tax Collector. Subsequent to said sale, the original owner of said land made what he called a deed thereof to a portion of said section and the person to whom such deed was made or attempted to be made now makes application to redeem the part of said land so bought under Section 3109, Code of Alabama, 1923.

You ask my opinion as to whether or not such person purchasing, or attempting to purchase, from the taxpayer, such portion of such land acquired any right to redeem the portion so bought by him under the provisions of Section 3109, Code of Alabama, 1923.

In reply to your question, will say that under the facts as stated, the attempted sale of such land by the original owner, after it had been purchased at the tax sale by another than the State, together with the deed attempted to be made, was a nullity. The only right that the taxpayer had in such a case was to redeem all of the land sold in a body at the tax sale within two years after the date of the sale. The original owner of said land might have sold it all, or any portion thereof, at any time before a sale was made by the State for the taxes; but after the tax sale was made, the only right that such taxpayer had then left to him was the right to redeem the land. After so redeeming it, of course, he might sell it to anyone he wished.

The provision in Section 3109 permitting any mortgagee or purchaser of such lands, or any part thereof, to redeem the part so mortgaged or purchased, refers to mortgagees and purchasers prior to the sale of the land for taxes. After such sale the tax payer has no right or privilege with reference to such land, except to redeem it; and, in order to redeem it, he must redeem the whole tract sold, unless someone has redeemed a part thereof as provided by the statute.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

September 22, 1933.

Hon. G. L. Malone,
Judge of Probate, DeKalb County,
Fort Payne, Alabama.

Deed made to City Board of Education of the City of Fort Payne, Alabama, conveying lands to be held in trust by the members of said Board for the use of the public schools of said City, does not require the payment of a filing tax, on presentation to the Probate Judge for record.

Opinion by Assistant Attorney Evans.

Dear Sir:

I have your letter of September 5th. You request my opinion as to whether or not you should collect a filing tax under the provisions of Section 22½ of Act No. 163, approved July 22, 1927, on the filing of a deed for record in the Probate Office made to the City Board of Education of Fort Payne, conveying land to be held in trust by the members of said Board for the use of the public schools of said City of Fort Payne.

In my opinion there was no legislative intent to tax the filing of such a deed. The deed is for the benefit of the State public school, and to tax filing such a deed would, in my opinion, be in effect, the State taxing itself. That is never presumed. That should never be presumed nor so held to be the law unless the Act levying it specifically states that it shall apply either to the State or to such as instrumentality of the State.

Yours truly,
THOMAS E. KNIGHT, JR.
Attorney General.

September 23, 1933.

Mr. J. R. Gamble,
State Tax Commission,
CAPITOL.

Provisions of Section 19, Acts 1927, page 139, as amended by Act No. 676 approved July 30, 1931 (Acts 1931, Page 812) relating to exemptions of non-resident dealers using dealers tags of other states.

Opinion by Assistant Attorney General Moore.

Dear Sir:

On July 12, 1933, I rendered an opinion in response to your inquiry holding that the reciprocity provisions of the automobile law did not apply to non-resident dealers tags.

You have requested a review of the opinion, pointing out that it has interfered with the orderly delivery of new cars from factory to agents, and other states have threatened reprisals, on the part of other states.

The exemption given to non-resident owners is to a "motor vehicle owned by a non-resident of this State and not used for hire."

Upon further consideration I am of the opinion that a non-resident dealer demonstrating his car or passing through the State when transporting cars or trucks from the factory is not using the same for hire.

The foregoing exemption would apply only and to the same extent that such privileges are extended Alabama dealers by other states.

The opinion of July 12, 1933, is withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 25, 1933.

Hon. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission,
CAPITOL.

It is the duty of the several Probate Judges to fill in the three blank places on the application blank furnished by the Tax Commission, which three blank places call for the weight of privately owned passenger cars and the manufacturer's rated capacity in the case of trucks.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of September 21st has been received. Your letter follows:

"The O'Neal Bill passed at the last regular session of the State Legislature levies a license on privately owned passenger cars on the weight basis instead of the horse power basis as was previously levied. We are having a number of inquiries from tax assessors and probate judges as to whose duty it is to fill in on the regular application blank sent each year to the tax assessor, the weight of the passenger cars.

"We, therefore, request your opinion as to whether it is the duty of the probate judge or of the tax assessor to fill in the weight of passenger cars in the space provided for that purpose on application blanks furnished the assessor."

You inquire whether, under the O'Neal Bill, it is the duty of the tax assessor or the probate judge to fill in the part of the application blank calling for the weight of privately owned passenger cars, and calling for the manufacturers' rated capacity in the case of trucks.

I have examined the O'Neal Bill (House Bill 107) Section 20 at page 214 of The Revenue Laws of Alabama of 1929, (as compiled by Henry C. Allen), and the application form promulgated by the State Tax Commission, in

pursuance of authority found in the section of the Revenue Laws just mentioned, viz., Section 20.

Section 20 provides that:

"* * * the tax assessor of such county shall deliver to such person who makes the return as herein required, a certificate of assessment on a form prescribed by the State Tax Commission, and such certificate shall be the warrant of the tax collector to collect the tax as shown thereon."

The application form promulgated by the Tax Commission is used first by the tax assessor, that is, the form makes its appearance first in the office of the tax assessor. It is the duty of the tax assessor to fill in every blank on the application form furnished by the State Tax Commission, except the blank space calling for the weight of vehicles, in the case of privately owned passenger cars, and the manufacturers' rated capacity in the case of trucks, and except the certificate at the bottom of the said application blank. All of the other blank spaces on the certificate are filled in by the tax assessor.

The O'Neal Bill changes the law existing heretofore in the following way: It provides that the license tag or registration fee is governed by the weight of such privately owned passenger car. The tax assessor has nothing to do with the registration fee or license tag. This is a matter that addresses itself solely to the probate judges. So, I am of the opinion that it is the duty of the several probate judges of the State to fill in the three blank places on the application blank calling for the weight of privately owned passenger cars and calling for the manufacturers' capacity in the case of trucks.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 25, 1933.

Mr. J. R. Gamble,
State Tax Commission,
CAPITOL.

Section 7, Acts 1927, page 139, levying a license on attorneys not violative of Section 221 of the Constitution.

Act 241 approved June 6, 1931, Acts 1931, page 284, amending the Act of 1923 providing for the organization, regulation, etc., of the State Bar does not repeal the license required of practicing attorneys provided for by Section 7, Acts 1927, page 139.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 16, 1933, in which you ask:

"Is the license on attorneys levied by Section 7, Acts 1927, page 139, in violation of Section 221 of the Constitution?"

This Section Provides:

"Sec. 221. The Legislature shall not enact any law which will permit any person, firm, corporation, or association to pay a privilege, license, or other tax to the State of Alabama, and relieve him or it from the payment of all other privilege and license taxes in the State."

This Section was construed in the case of Exchange Drug Company vs. State Tax Commission, 117 So. 673, in which it was decided that the words "all other" meant strictly that and unless the schedule attempted to relieve the licensee of both county and municipal licenses, the Section was not violated.

Said Section 7 does not attempt to relieve the licensee of any but the County license and under the foregoing rule of the Supreme Court, Section 221 is not violated.

You also ask if the Act of 1931 amending the Act of 1923 regulating the State Bar repealed the regular license for attorneys provided for by Section 7, Acts 1927, page 139. In my opinion it does not. The Act of 1923 regulating the State Bar provided the same license. This Act was primarily a regulatory measure and the license required was devoted principally to the payment of the expenses of the State Bar. It is not, in my opinion, a revenue measure but a police measure. Subsequent to that in the Revenue Act of 1927 a Section was included levying a regular license tax on practicing attorneys. This is an occupation tax and by its terms was in addition to the membership fee of the State Bar Association.

In my opinion the Act of 1931 merely changes the regulatory provisions relating to the collection and disbursement of this fee, and does not in any wise affect the regular revenue license provided for by the Act of 1927.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 27, 1933.

Hon. J. M. Gray, Chairman,
Walker County Commission,
Jasper, Alabama.

Where Tax Assessor has completed and filed abstract of all assessments except those in litigation he should be paid compensation provided by Section 45, Revenue Acts 1923, but should complete such abstract when litigation terminated.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Will thank you to give me your opinion, as Chairman of Walker County Commission on the following questions:

"The Tax Assessor for Walker County as provided in Section 45 of the 1923 General Acts, has entered in a book in concise form the amount of taxes assessed against each taxpayer, showing separately the amount of taxes assessed on real and personal property and other subjects of taxation, and the total amount of taxes due and the fees of the Assessor and a blank for the fees of the Tax Collector; and such book has been turned over to the Tax Collector; however, the State Tax Commission has not reported to the Tax Assessor the assessed value of public utilities, and this book as provided for in Section 45 of General Acts at page 178 does not contain in the assessment of public utilities made or to be made by the State Tax Commission. The Tax Assessor presented a bill for \$480.00 for making this book as he states that he as Tax Assessor has done all he can do since the public utilities are assessed by the State Tax Commission and therefore, he is entitled to his pay from the County.

"Question (1) Is the abstract or book required to be made and turned over to the Tax Collector as contained in Section 45 of 1923 General Acts, complete before the State Tax Commission reports to the Tax Assessor the assessments of public utilities; and, should the County pay for the services performed by the Tax Assessor as contained in Section 45 before the book of assessments has been completed by placing the assessments of public utilities therein?

"Question (2) In view of the local law for Walker County, Local Acts 1923, page 226, is Walker County due to pay for the services contained in Section 45 of General Acts of 1923 at page 178; or does said Local Act affect Section 45 with reference to services for entering in a book in concise form the taxes assessed against each taxpayer, etc. If you say Walker County should pay this, please state when it is due and payable."

In reply to question one, I advise that it is of course the duty of the Tax Assessor to complete the abstract as soon as the complete assessments are received by him. It does not seem though if a particular assessment is in litigation his compensation should be held up indefinitely. It is my opinion that if he has completed the abstract as far as possible he should be paid with the condition that the abstract be completed, or a supplemental abstract made when the additional information is available.

In reply to question two, I am of the opinion that Local Acts of 1923, page 226, does not relieve the County of liability for the abstract. It relates to a different subject.

Yours very truly
THOMAS E. KNIGHT, JR.,
Attorney General.

September 27, 1933.

Hon. J. R. Kelley,
Tax Collector, Connecuh County,
Evergreen, Alabama.

Taxes due on assessment made against shares of State Bank which was later declared insolvent, may be collected out of shareholders as other taxes are collected.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"In your opinion of September 12, 1931, addressed to Hon. H. C. Rosser, Tax Collector of Hale County, you state that 'Shares of stock belong to the shareholder and a bank which has no surplus or undivided profit is without authority to pay taxes on such shares of stock.' You further state that 'The shares of stock owned by stockholders and other property of the stockholders may be levied on land sold for the payment of the taxes against said stockholders.'

"The Peoples Bank of Evergreen closed its doors about August 1st last year. It had assessed the stock and agreed to pay taxes on same for the shareholders as of October 1st, 1931, that is for 1932 taxes. It is now in the hands of the State Banking Department for liquidation. According to your rulings the Liquidating Agent cannot pay these taxes, and since it is my duty to collect from the stockholders, I would like your opinion on the following questions:

"1. What property of stockholders am I authorized to levy on? Can I levy on both personal or real property?

"2. If the stockholder has already paid all taxes levied against him for 1932, except such taxes on his stock can I go now and levy on such other property?

"3. If his land is under mortgage and the mortgagee has paid the taxes for the year 1932 can I levy on such lands? (In this connection I call your attention to Acts of last Special Session providing that a mortgagee may release land by paying the taxes due on the land mortgaged.).

"4. If property owned by stockholder is under mortgage and taxes otherwise have been paid, can I levy on this property for taxes on the stock?

"I will appreciate your prompt opinion as I have to take some immediate action and many of the shareholders refuse to pay."

In reply to your first question, will state that Section 416, Acts 1919, page 282, provides in part "that from and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him." In my opinion you proceed as in any other case. First against the personal property and if none, against the real estate.

The foregoing quoted Section answers your second question in the affirmative.

In reply to your third question, I call your attention to the terms of Act No. 287 approved November 9, 1932 (Acts 1932, page 282.):

"Provided such person or corporation to whom such purchased or encumbered property is assessed, or for whose taxes such purchased or encumbered property is subject to a tax lien, **has sufficient other real estate or personal property** returned or assessed and subject to levy or sale out of which the remainder of the taxes may be collected by the Tax Collector."

In view of this proviso, it does not seem that you as Tax Collector would or could have released a portion of the property, unless you could collect the remainder out of the taxpayer.

In reply to question four will state that it is my opinion you can. In *Pratt v. State*, 145 So. 163 & 165, the tax assessed against the shares was held to be a personal obligation of the owner of the stock.

This being so, it is in my opinion enforceable as taxes otherwise assessed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 27, 1933.

Hon. H. K. Martin,
Judge of Probate, Houston County,
Dothan, Alabama.

Mortgage made to third party and transferred to National Bank and by it filed for record, not subject to registry tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 18, 1933, in which you state:

"Mr. M. E. Murray, Receiver of Dothan National Bank, had tendered to me for recording certain mortgages in which the payee is another than the Receiver of the Dothan National Bank, but Mr. Murray states that the mortgages are the property of the Bank, and transferred by the payee to the Receiver. I have told him that it is my understanding that while the receivership is not liable for mortgage tax in which he or the National Bank are the payee, but that when the paper is payable to some other person, an individual and so transferred, that it is my duty to collect the mortgage tax.

"Mr. Murray objects and declines to pay this tax, and requests that I obtain a ruling from you."

In two previous opinions of this office mortgages to national banks have been held not subject to the registry tax.

In the opinion to Hon. W. M. Vaughan, Probate Judge of Dallas County, under date of March 28, 1933, the decision in *Federal Land Bank v. Crosland*, 67 L. Ed. 705, was quoted as holding that the filing tax is a tax against the mortgage.

If this be so and the mortgage is bona fide the property of the national bank or in your case the Receiver of a National Bank, I am of the opinion that under the authority of the two previous opinions no filing tax is collectable.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 27, 1933.

Hon. Jake Oppenheimer, President,
Board of Revenue, Barbour County,
Eufaula, Alabama.

Bank may pledge its assets to surety on depository bond.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

As a member of the Board of Revenue of Barbour County, for the Board, and its information, I am propounding to you the following questions, and will very much appreciate an opinion on the same at as early date as your office can present it.

"1. As to the authority of the state banks in Alabama to pledge their assets to secure public money deposited in state banks by the treasurer, or other proper officer of the state, county, city, or other political subdivision of the state; and

"2. Whether the state banks have the authority to pledge their assets to a surety, where the state laws require or permit the state banks to give a depository bond to the depository instead of a pledge of asset, and the surety requiring a pledge of assets before it will execute a depository bond."

In answer to question 1, I call your attention to two opinions appearing in Biennial Report 1930-32 at pages 63 and 654, which fully answer your inquiry.

In answer to your second question, I am of the opinion that such pledge of assets may be made to a surety on a depository bond. If a bank as held in the foregoing opinions can pledge its assets, direct, I can see no reason for a different rule, if the pledge is to be made to the surety on the official bond, rather than to the person secured.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

September 28, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission,
CAPITOL.

Manufacturers of underwear and other garments made from knitted cotton cloth held not liable for license under Schedule 37, Section 361, Acts 1919, page 282, (Schedule 49, 1929 Compilation). Opinion June 28,, 1933, contra withdrawn.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 24, 1933, in which you state:

"Under date of June 5th I requested an opinion of you as to the liability for license, under Schedule 37, Section 361, page 282, Acts 1919, of manufacturers of underwear and other garments made from knitted cotton cloth. You stated that in your opinion there is liability under the above schedule.

"After considering your opinion carefully I am of the opinion that you did not clearly understand my question. The underwear and other garments referred to are not made from the cotton yarn but from knitted cloth after the cloth has been manufactured from cotton yarn."

In writing the opinion of June 28th I was of the opinion that the inclusion of the word yarn mill was broad enough to include a manufacturer of underwear or other garments made from knitted cotton cloth. However, it appears from your letter that the underwear and other garments are not made from the yarn but from knitted cloth or other cloth after a complete manufacturing process has been had.

I am, therefore, of the opinion on the authority of *Dumas v. State*, 17 Ala. App. 492, 86 So. 162, that this Schedule would not require a license for manufacturing processes such as outlined in your latter letter. I am therefore of the opinion that under the facts outlined in your letter of July 24, 1933, there is no liability for license, under said Schedule. The opinion of June 28, 1933, is hereby withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General

September 28, 1933.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

Where mortgage, duly recorded, is foreclosed under power of sale in the mortgage and the mortgagee becomes the purchaser at the sale, and makes deed to himself by virtue of the power given in the mortgage, no filing tax is required under Act No. 163, approved July 22, 1927, on offering such deed for record.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of July 28th to hand. You write as follows:

"Where a mortgage on real estate has been duly recorded in my office and the mortgage tax thereon has been paid and the mortgage is foreclosed and the property purchased at foreclosure by the mortgagee, and a foreclosure deed is executed evidencing the foreclosure and foreclosure deed is presented for recording should I as Probate Judge require as a condition for the filing and recording of said instrument, the payment of a deed tax under Section 21½ of the Revenue Acts of 1927?

"I am aware of the fact that former Attorney Generals have answered the question in the negative. So opinions of the Attorney General 1922-24, page 230, and opinions of the Attorney General 1928-30, pages 686 and 866.

However, the question has recently been raised by some of the officials in charge of the County government of this County with the suggestion that these previous opinions are unsound and should be modified. It is argued that while the mortgage conveys to the mortgagee the legal title, the title thus conveyed is not the same as the title by the mortgagee after foreclosure and purchase, since after foreclosure and purchase the person originally holding as mortgagee has not only the legal title, but the equity of redemption as well.

" I would appreciate your opinion on this question at your convenience."

In reply I am sending you copy of opinion rendered by this office February 18, 1933, by the present administration.

This office had very carefully considered the point that you refer to when the first opinion on the subject was written to Judge Coleman, Annis-

ton, Alabama.—Opinions Attorney General 1922-24, page 230. This office has followed that opinion ever since; because it is logically and legally correct—especially under the construction of tax statutes. “A taxing statute is strictly construed against the taxing power.—State vs. Seals Piano Co., 209 Ala. 93; State vs. Florence Operating Co., 19 Ala. App. 196.

As said in *re Jackson et al vs. Tribble*, 156 Ala. 469; “In this case the proof shows that the mortgage was foreclosed by a sale under the power and that the mortgagee became the purchaser and made a deed to himself. There is no proof aliunde the recitals in the deed, that the terms prescribed by the mortgage were complied with; but the recitals of the deed show such compliance, and they are **prima facie evidence** of the facts stated therein, as against the mortgagor.—*Nengher vs. Sparkes*, 110 Ala. 527; *Williams vs. Mayer Bros.*, 117 Ala. 253. But suppose there had been no deed executed to the mortgagee, who purchased at the sale; then, according to the common law, the legal title was already in him, and without a deed he might maintain ejectment.—2 Jones on Mortgage, Sec. 1660.

“Furthermore, the sale cut off the equity of redemption as effectually without as with a deed, and left the mortgagor only the statutory right of redemption, which might be exercised within two years from the sale.—*Powers vs. Andrews*, 84 Ala. 289,” etc.

It thus clearly appears that the mortgage conveyed the legal title to the mortgagee, the sale cut off the equity of redemption lying in the mortgagor, and nothing was left in the mortgagor except the statutory right of redemption. This is left no matter how many deeds are made under the power given in the mortgage. Such being the case, on a strict construction against the state on a tax statute, what real estate or interest in real estate is conveyed by a mortgagee to himself on a foreclosure of a mortgage? The mortgage conveyed the legal title and the sale, under the power given in the mortgage, cut off the mortgagor's equity of redemption. The only right left in the mortgagor, before the deed was executed was the statutory right of redemption and this was not affected by the deed.

In the case of *Jackson et al vs. Tribble*, just quoted from the Supreme Court very properly gave enough importance to the deed made by the mortgagee to himself on foreclosure under the power of sale given in the mortgage, to make it **prima facie evidence** of its recitals, when duly recorded, showing that the terms prescribed by the mortgage were complied with on making foreclosure; but very clearly showed that such deed did not convey any real property or interest therein.

Section 21½ of Act No. 163, approved July 22, 1927, under which we are now operating, provides, so far as affects the question under consideration: “No deed which conveys any real property, within this state, or which conveys any interest in any such property. . . . , shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit.” etc.

We are clearly of the opinion that the former rulings of this office on the subject are correct.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 28, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Status of check deposited by contractor upon failure to execute bond.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 27, 1933, together with other correspondence and other data from which the following facts appear:

That the County Board of Education of Coosa County advertised for bids for the erection of an auditorium for Weogufka School. The advertising notice required that each bid be accompanied by a certified check of \$100.00 as a guarantee that the contract and bond would be executed. Bids were submitted accordingly together with the required checks, and the individual who was awarded the contract was unable to procure a satisfactory bond to secure the building contract, copy of which was enclosed in your letter. Due to the inability of this contractor to execute such a bond, it was necessary for the Coosa County Board of Education to readvertise and relet the contract. The original contract being awarded several weeks ago necessarily means that the County Board of Education will suffer a substantial loss in awarding a new contract for the reason that the cost of materials has greatly increased.

In view of the above you wish to be advised as to whether or not the County Board of Education is within its legal rights in withholding the check in order that it might supplement any loss that may be incurred.

I am of the opinion that your inquiry should be answered in the affirmative.

The advertisement for the bids contained the following proviso: "Bids must be accompanied by a Certified Check of \$100.00 as a guarantee that contract and bond will be executed; said check to be made payable to the Coosa County Board of Education."

In view of the above proviso, I am of the opinion that the check in question may be held by the County Board of Education, as same is in the nature of a forfeit. The check was required in order that satisfactory bond be executed. Upon failure to execute said bond, the contractor forfeited the deposit check.

I am herewith enclosing the file in this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 28, 1933.

Hon. A. A. Strickland,
Clerk of Circuit Court,
Vernon, Lamar County, Alabama.

Fees of constable.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 22, 1933, in which you request my opinion as follows:

"When a constable arrests a person and he is committed to jail, is this constable entitled to mileage for bringing him to jail."

Answering your request I call your attention to Section 3756, Code of Alabama, 1923, and especially to that subsection which is as follows:

"For carrying a person before a magistrate under a warrant of arrest, or to jail when committed thereto, for himself and each necessary guard, to be proved by his own oath, for each mile \$.10."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 28, 1933.

Hon. Landon G. Smith, Director,
State Highway Department,
Montgomery, Alabama.

Construing Alabama Contract-Common Carrier Motor Vehicle Act
of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg knowledge of receipt of your letter of March 7th. Your letter follows:

"There has arisen among the contractors working for the Highway Department the question as to whether or not a sub-contractor employed by the original contractor to haul material to the job must qualify under the Tidwell Bill No. 113 and I will thank you to advise me whether or not a sub-contractor hauling under the following conditions must qualify:

"1st. Where the original contractor enters upon a section of state highway for the repair or construction of such section of road and the engineers of this Department have ordered closed to traffic such sections of road and have erected signs to this effect and where such original contractor owns no trucks of his own, but hires trucks agreeing either upon a rate per day for the use of said truck or agreeing upon a tonnage or cu. yd. rate for the use of said truck, the said trucks being used, that is, having pay load only on the section of road closed.

"2nd. Where the original contractor enters upon the construction of a section of road closed as above stated and who enters into an agreement with owners of trucks to deliver material belonging to the said original contractor from a railroad siding, quarry or other source which is located outside of that part of the road closed for construction, whether said material be located on a state highway, county road or private road.

"3rd. Where a contractor leases at an agreed stipulation trucks owned by others for the purpose of hauling machinery, supplies, materials or anything needed in the construction of a highway, whether said trucks be used on that part of the road closed or on any other road or state highway and where the material hauled by the trucks so leased is the property of the said contractor.

"4th. Where a contractor or sub-contractor is hauling materials over a highway not closed to traffic at an agreed rate per yard where the material belongs to the state or is to be paid for by the state and not by the contractor hauling the material.

In answer to your first question, it is my judgement that the sub-contractor hauling under the conditions set out in your first inquiry would not have to qualify under the Alabama Contract-Common Carrier Motor Vehicle Act of 1932. Such a sub-contractor is not such a common carrier nor such a contract carrier as is contemplated by said Act, nor is the motor vehicle such a motor vehicle as is described in the Act. Under the Act the motor vehicle must be propelled or operated over or on the public highways of this State. Such a road as is described in your first inquiry is not such a public highway as is described in the Act. A closed road, under construction, is not a public highway within the meaning of this Act.

In answer to your second inquiry: This character of operation falls squarely within the influence of the above mentioned Act. Under the facts set out in your second inquiry, the owners of said trucks must qualify under the above mentioned Act either as common carriers or contract carriers. As to whether such operation constitutes the owners contract carriers or common carriers is not quite clear, but it appears that the character of this operation constitutes the owners of the trucks contract carriers. Of course, if the trucks run on private roads altogether, such trucks would not fall under the influence of the Act at all.

In answer to your third inquiry: As I understand your third inquiry, "A" is the original contractor and "A" leases from "B" five trucks. "A" uses these trucks for the purpose of hauling "A's" supplies and materials. The trucks remain under the control and management of "A". You inquire whether "A" must qualify under the Act while running the trucks on a closed road, such as is described above, or on a public highway or private road. Under this state of facts it would not make any difference whether the hauling were done on a closed road, such as is described hereinabove, or on a public highway or on a private road. Such operation would be exempt from the operation of the Act because "A" is hauling his own property. It would make no difference whether "A" hauls his own property through a sub-contractor or an agent, so long as "A" hauls only his own property and maintains control of the trucks.

Now, under your third inquiry, let us suppose that "A" is the original contractor and he leases or rents trucks for the purpose of hauling "A's" own property. Later "A" employs "B", a sub-contractor to haul these materials of "A". "B" assumes complete control and management of the trucks and holds himself out as a person who will enter into contracts for the transportation of goods and materials. Under this statement of facts, if "B" hauls the materials belonging to "A" over a public highway, such as is described in the Act, "B" would have to qualify under the Act as a contract carrier. If such hauling is done over a private road exclusively, such hauling would be exempt under the Act. If such hauling is done on a closed road such hauling would also be exempt.

In answer to your fourth inquiry, this office has heretofore held that a carrier who operates a motor truck over the highways of Alabama, in the

transportation, for hire, of property for the State, a county, or a municipality, and who hauls only for the State, a county or a municipality, and who does not hold himself out to the public as being engaged in the transportation business, is not such a common carrier or contract carrier as is described by Section 1 of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932.

I do not think it was the intention of the Legislature, in enacting the Motor Carrier Act of 1932, to place a tax on the State. If a contractor or sub-contractor is hauling material belonging to the State of Alabama, I do not think such operation falls under the influence of any of the Motor Carrier Acts of this State, no matter whether the hauling is over a closed road, a public road or a private road. However, in order to be exempt from the Act the property hauled must belong to the State at the time it is being hauled. Present ownership and not subsequent ownership would be the criterion. It would be immaterial that the State would later own the property, that is, subsequent to the time of the hauling. Under the facts just stated, if the State has purchased property and has not yet paid for the same but expects to pay for the same on delivery, then such an operation as this would not fall under the influence of the Act, and would be exempt from the operation of the Act, because the property would, as a matter of fact, belong to the State. Present payment would be the criterion and not future payment. The fact that the State might pay for the material after two or three commercial transactions had intervened would not entitle the operation to any exemption. In all operations by trucks where ownership of property by the State is involved, present ownership is meant. In all operations where the State is or appears to be involved and where payment of property by the State is involved, present payment and not subsequent payment is intended. If the operation is to be exempt it must be exempt because of the first act, and intervening commercial transactions would destroy the exemption.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 29, 1933.

Professor A. B. McLeon,
County Superintendent of Education,
Ozark, Dale County, Alabama.

School teachers in Alabama teaching in counties and cities, are paid their salaries out of the Public School Fund, the Equalization Fund, the Attendance Fund, the High School Education Fund, and the County High School Fund; of the funds just mentioned, 96 per cent thereof must be used for paying salaries to school teachers and any part of the remaining 4 per cent may be used for the purpose of paying bus drivers;

any part of the Bonus School Fund or of the Revolving Fund, may be used for the purpose of paying either bus drivers' or teachers' salaries.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of August 23rd has been received. Your letter follows:

"I write you this letter in the capacity of County Superintendent of Education of Dale County, Alabama.

"Kindly advise me from what school fund or funds the teachers of the public schools of Dale County are paid. I also desire to know from what funds the drivers of school busses are paid. I will thank you to also advise me whether school bus drivers may be paid from the same fund that teachers of public schools are paid from."

In answer to your letter, I beg to advise that the several county and city units in this State procure moneys for educational purposes from the following sources:

Maintenance

Public School Fund—Constitution of 1901, Sec. 260, page 404.

Public School Fund—General Acts of 1932, Sec. 21, page 326.

Equalization Fund—General Acts of 1932, Sec. 1, page 288.

Attendance Fund—General Acts of 1932, Sec. 2, page 288.

High School Education Fund—General Acts of 1932, Sec. 6, page 289.

Bonus School Fund—General Acts of 1932, Sec. 9-A, page 290.

County High School Fund—General Acts of 1932, Sec. 9-B, page 290.

Revolving Fund—General Acts of 1932, Sec. 9-G, page 291.

Other Services

Rural School Library Fund—General Acts of 1932, Sec. 3, page 288.

Vocational Education—General Acts of 1932, Sec. 5, page 289.

Rural Schoolhouse Building Fund—General Acts of 1932, Sec. 19, page 295.

Removal of Illiteracy Fund—General Acts of 1932, Sec. 20, page 296.

Of the appropriations listed above and classified as "Maintenance" 96 per cent of the Public School Fund, the Equalization Fund, the Attendance Fund, the High School Education Fund and the County High School Fund must be used for payment of teachers' salaries. This is in accordance with Section 27 of Act No. 292 of the 1932 Extraordinary Session of the Legislature. (Page 297 General Acts of 1932.)

The appropriations listed under "other services" are apportioned to the counties on the basis of applications made for projects and special services.

Of the various funds mentioned under "Maintenance" bus drivers may be paid from any part of the Bonus School Fund or the Revolving Fund. Of the several funds mentioned under "Maintenance" only 4 per cent of the other five funds may be used for paying bus drivers. In other words, any part of the Bonus School Fund and any part of the Revolving Fund may be used for paying bus drivers, and any part of the 4 per cent of the remaining six funds may be used to pay bus drivers.

No part of the funds mentioned under "Other Services" may be used for the purpose of paying teachers or for the purpose of paying bus drivers.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 29, 1933.

Mrs. Gertrude P. Calloway,
Treasurer of Chilton County,
Clanton, Alabama.

Costs in Felony cases—How Paid.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of July 6, 1933, in which you request my opinion as follows:

"An opinion is requested on the following facts: A certain defendant was indicted for first degree murder in Chilton County, Alabama, and was thereupon convicted for manslaughter in the first degree and was sentenced for a year and a day in the penitentiary. The total costs in the case were something over \$400.00, and the amount paid by the State to the Circuit Clerk in full settlement so far as the state was concerned was about \$240.00.

"Execution against the defendant has been returned 'no property found'.

"First, if the Clerk pays a certain percentage of all classes of claims, is the deficit chargeable against and properly payable out of the Fine and Forfeiture Fund of Chilton County? Is there any difference between the state's witnesses fees and the officers' cost, that is, would one be a proper charge and not the other as against the Fine and Forfeiture Fund?"

This being a felony case, it does not come under the former rulings of this office which have reference to costs in misdemeanor cases or cases where the defendant is sentenced to hard labor for the county to pay fine and costs. In felony cases, the defendant is not sentenced to any additional term to pay costs, but is given a straight sentence which does not include costs. Therefore, under the rule laid down in the case of Gray, Treasurer, vs. Abbott, 30 So. 346, we are of the opinion the treasurer should register any balance due on costs after giving credit for the amount paid by the State which, in this case, is \$240.00, leaving a balance of \$160.00, which, under the authority of the case, *supra*, is payable out of the Fine and Forfeiture Fund of your county.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 29, 1933.

Hon. H. E. Kendrick,
Tax Collector,
Selma, Dallas County, Alabama.

Where city purchases property at sale for State and County taxes, it is liable only for taxes due on assessments made prior to such sale.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter dated February 20, 1932, which, in some manner, never received a reply. I am now in receipt of your letter of August 14th, calling attention to the previous request and the correspondence relative thereto. In your letter under date of February 20, 1932, you state:

"In June of 1930, the City of Selma bought at tax sale, a certain piece of real estate that was sold for 1929 State and County tax.

"It is claimed by the City of Selma that this purchase was made by the city to protect certain improvement assessments made by the City against this property.

"The property in question was assessed by the assessor against the delinquent owners for the years 1930 and 1931, and the City of Selma paid the tax for the year 1930.

"The City of Selma holds a certificate of sale, but cannot get a tax deed until the expiration of two years from June, 1930, which will be June 1932.

"The City of Selma is claiming that, due to the fact that City of Selma property is not subject to taxation, that they are not liable for 1931 taxes on the property above mentioned, will you please give me your opinion in this matter? I am enclosing you a letter I received from the City Attorney of Selma."

In reply I beg to advise that in my opinion the City of Selma was of course liable for the 1929 State and County tax for which the property was sold, and at which sale the property was purchased by the city.

If the property had been assessed for State and County taxes for 1930, prior to such sale, the lien of the State and County having accrued then the City of Selma would of course be liable for the taxes for the year 1930. You state, however, that the city has paid the tax for the year 1930.

If the title to the property went to the city at the sale in June, 1930, the property would not thereafter be liable to subsequent assessment for State and County taxes, as the property of the city is not subject to taxation. The fact that the deed at a tax sale is not actually executed until two years after the date of the sale cannot affect the liability of the city under the facts in my opinion.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 3, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of Section 4 and 5 of the Alabama Motor Carrier Act of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 30th. Your letter follows:

"The Commission requests your official opinion in answer to the following inquiries:

"The A.B. Company is the owner of a certificate of public convenience and necessity, for illustration, No. 10 between two certain termini; and also the owner of certificate No. 11 between certain other and different termini.

"The A. B. Company has executed a lease for a period of one year of said two certificates to the C. D. Company and has presented said lease to the Commission for its approval thereof.

"Question 1: Does such lease come within the provisions of Section 4 of said Alabama Motor Carrier Act of 1931, requiring a public hearing where a certificate of public convenience and necessity is sold, transferred or assigned?

"Question 2: Is the application fee required under the provisions of Section 5 in the case of such application to the Commission for its appropriate action in approving the lease? And if an application fee is required, does the statute require two fees of \$25.00 each, because the leased includes two different certificates?

"Question 3: Does every lease of a certificate of public convenience and necessity, regardless of whether it is for a short period of time,—for illustration, one year or less, or six months or less, or for a period of several years, come within the requirements of Section 4 of the Act as to the necessity for notice and hearing of the application to the Commission for approval of any such lease?

"Question 4: Would any such lease as described in the preceding inquiry, No. 3, without regard to the duration and time of the lease, come within the provisions of Section 5 of the Act with respect to the necessity of payment of an application fee of \$25.00?

"John Doe is a motor transportation company under said Act, operating in the transportation of passengers and small packages of goods between certain termini. He executed a single instrument to Richard Roe under which he leases his certificate of public convenience and necessity No. 100 to the said Richard Roe for a term of 37 days, and under said instrument he grants to the lessee the right to purchase his said certificate outright for a stated amount, and the grantee under said instrument, by the instrument itself, notifies the lessor that the lessee de-

sires to exercise its option to purchase said certificate. Richard Roe presents said instrument to the Commission for its appropriate action thereon.

"(a) Does the Act referred to require an application fee of \$25.00 on account of the lease included in said instrument and also a \$25.00 fee on account of the proposed sale and transfer of said certificate, or will one fee of \$25.00 under the Act cover the requirements of the Act with respect to such application fees?

"(b) Does the Act require the application for the approval of the said lease included in said instrument to be set down for hearing and notice thereof issued under said Section 4, or is it within the power of the Commission to pass upon such lease without notice and hearing in the matter of such entire instrument, both to lease and to transfer the title to said certificates?

"Will the statute be complied with if the application to transfer or sell the certificate be set down for hearing and notice given under said Section 4.

"The Commission has applications of the sort above described now pending before it, and we will thank you to give us your opinion hereon as promptly as possible, so that we may proceed in accordance therewith."

Section 4 of the Alabama Motor Carrier Act of 1931 provides that it is unlawful for any transportation company to operate or furnish service without first having obtained from the Public Service Commission a certificate declaring that public convenience and necessity will be promoted by such operation.

Under the facts set out in the second and third paragraphs of your letter of August 30th, the A. B. Company is the owner of two certificates of convenience and necessity: Certificates No. 10 and No. 11, which two certificates authorize two separate operations. In the same instrument (a lease) the A. B. Company leases to the C. D. Company, for a period of one year, the business of the A. B. Company, which lease authorizes the C. D. Company to carry on the two separate operations authorized in the two certificates mentioned above. This lease is presented to the Commission for approval.

Under the above stated facts, you propound four inquiries. It appears that the four inquiries involve Sections 4 and 5 of the Said Act. Section 4 of the Alabama Motor Carrier Act of 1931, in part, provides:

Section 4. (a) It is hereby declared unlawful for any motor transportation company to operate or furnish service within this State without first having obtained from the Commission a certificate declaring that

public convenience and necessity will be promoted by such operation. The Commission, upon the filing of a petition for such certificate, shall within a reasonable time, fix a time and place for hearing thereon. **The Commission shall cause a copy of such petition and notice of hearing thereon to be served at least twenty days before the hearing upon an officer or owner of every common carrier of passengers or property for hire, including railroads and upon every other applicant for a certificate to operate in the territory proposed to be served by the applicant and on the State Highway Commission, and on the city clerk of any city and on the Judge of Probate of each county into or through which said motor transportation company may desire to operate and the State Highway Commission, every such common carrier or city or county is hereby declared to be an interested party to said proceedings and may offer testimony for or against the granting of such certificate, and any other person or persons who might in the opinion of the Commission be properly interested in or affected by the issuance of said certificate may offer testimony for or against the granting of such certificate. If the Commission shall find from the evidence that public convenience and necessity will be promoted by the creation of the service proposed, or any part thereof, as the Commission shall determine, a certificate therefor shall be issued; provided where a certificate such as provided for above shall have been regularly issued and thereafter the motor transportation company to whom such certificate shall have been issued, shall sell, transfer or assign the business, rights and assets of such motor transportation company then and in that event the said certificate, originally issued to such motor transportation company, shall, upon application to the Commission and upon like notice as hereinabove provided to all interested parties if the Commission after hearing shall be of the opinion that the purchaser thereof is in all respects qualified under the provisions of this Act to conduct the business of a common carrier in the transportation of passengers or property for hire within the meaning of this Act, may be by such Commission transferred to the purchaser and be effective in like manner as though originally issued to such purchaser, provided, however, that a motor transportation company now holding a certificate of public convenience and necessity issued to it by the Commission shall not be required to apply for a new certificate under this Act, but the certificate now held shall be effective as if issued under this Act, but this shall not be construed or held to relieve the holder of such certificate from complying with all other provisions of this Act and any and all other laws now or hereafter in effect."**

I invite your special attention to the quoted part of the said Act, and especially to the parts underscored. It will be noted that Section 4 provides that in the event a certificate of convenience and necessity, regularly issued, is sold, transferred or assigned, notice of twenty days must be given, a hearing had and an application fee of \$25.00 paid. In other words, when a certificate is sold, transferred or assigned, substantially the same procedure must be followed as is followed at the time the certificate was originally issued.

We also invite your attention to the following words found in Section 5 of the Alabama Motor Carrier Act of 1931: "Application for transfer, mortgage or pledge of a certificate of public convenience and necessity twenty-five (\$25.00) dollars." Construing Section 4 and 5 together, it appears certain that it was the intention of the Legislature to require notice, a hearing and the payment of a fee of \$25.00 in cases where the certificate is mortgaged or pledged, and in cases where the certificate is sold, transferred or assigned.

Your state of facts, as set out in the second and third paragraphs of your letter, does not involve a mortgage sale, transfer, assignment or a pledge. The state of facts you set out does involve a lease. It will be noted that a lease is not mentioned in either Section 4 or Section 5. The Act is silent as to transactions involving leases.

It will be well to inquire into the meaning of these words: Lease, mortgage, sell, transfer, assign and pledge. The statute applies to transactions involving mortgages, sales transfers, assignments and pledges, but the Statute is silent as to transactions involving leases; so, it would appear that in those cases where a lease is involved the statute does not require notice, a hearing and the payment of a fee.

The word "lease" means: To let, to farm out, to rent.—**Atlanta & C Air Line Ry. Co. v. Harrison, 756a, 757.** A lease imports a thing let.—**Somner v. Bavarian Star Brewing Co., 28 N. Y. Supp. 571.** When one grants to another an estate for years out of his own estate, with reversion to himself, it is usually termed a lease. It may be confined to a particular interest in lands, such as a mining or agricultural interest in which event no other interest passes.—**Civil Code, Ga. 1895, Sec. 3114.** In Alabama, our Courts say the word lease is generally used with particular reference to real estate, resulting in relation of landlord and tenant.—**Hendon v. McCoy, 133 So. 295, 222 Ala. 515.**

An assignment is not a lease. The following cases clearly point out the difference between a lease and an assignment: **McKee v. Howe, 17 Colo. 538; Craig v. Sumners, 49 N. W. 742.** As pointed out in the McKee case, supra, a lease is properly a conveyance of any land, made for life or years; or at will, but always for a less time than the lessor hath in the premises, for, if it be for the whole interest, it is more properly an assignment than a lease. So, an assignment is not a lease. An assignment is an entirely different thing from a lease.

A lease is not a sale. The courts have clearly pointed out the difference between a lease and a sale.—**Appeal of Duff (Pa.) 14 Atl. 364, 367; Del. L. & W. R. Co. v. Sanderson, 1, Atl. 394, 396 St. Rep. 745; Genet v. Delaware & H. Canal Co., 35 N. Y. Supp. 147, 154; Vorhees v. Presbyterian Church of Amsterdam (N. Y.) 5 Howard Prac. 58, 62; French v. Brewer (U. S. 9 Fed. Cas. 774.** It is not necessary to refer to further authorities to show the difference between a lease and a sale. In the recent case of Jefferson Gas Coal

Company v. Commissioners of Internal Revenue (C. C. A.) 52 F. (2nd), 120, 122, a Federal Court points out the difference between a lease and a sale.

A lease is not a transfer. The difference between a transfer and a lease is pointed out in the case of *Ober v. Schenck*, 65, Pac. 1073, in which case the court points out that: Transfer when used in its ordinary sense, is applicable to real property, and is either synonymous with the word sale, or imports something more than or subsequent to sale, (selling being one mode of transferring property) and, as used in a lease, providing that the lease should be void if there should be a transfer of the property during the term, means a transfer of the title, and not a transfer of possession. As used in Section 4 and 5 of the Alabama Motor Carriers Act of 1931, the word transfer undoubtedly means an act by which the title to property passes from one person to another. In other words, as used in the Alabama Motor Carrier Act, both in Section 4 and 5, the word transfer means an "unconditional and unqualified passing of the title to the certificate from one person to another. The word transfer is often used in leases, and when it is the distinction between the meaning of the two words: Transfer and lease, is clearly seen.—**Gazzem v. Young**, 194 P. 810, 114, ash 66. It is quite clear that a lease is not a transfer. Neither does the word transfer, as used in the Alabama Motor Carrier Act of 1931, include "lease".

A lease is very different from an assignment. The difference between a lease and an assignment is pointed out in the following cases: *Indian Refining Company v. Roberts*, (Ind) 181 N. E. 283; *Robertson v. Pioneer*, 137 So. 46, 48; *Smith v. Sun Oil Co.* 379; *Peck v. Ross* (Or) 8 pa. (2nd) 780; *Saling v. Flasch*, 277, P. 613; *City of Waterville v. Kelleher*, 141 A. 70 71, 127 Me. 32. As pointed out in the *Flesch* case, supra, the distinction between an assignment and a sublease or a lease is that the former creates no new estate, but transfers existing estate into new hands, an assignor parts with his whole interest for a whole term, while a lease or sublease creates a new estate resulting in relationship of landlord and tenant between sublessor and sublessee, and sublessor retains for himself reversionary interest in lands involved.

A lease is neither a mortgage nor a pledge. A lease is a thing entirely different from a mortgage or a pledge. The word "mortgage" and the word "pledge" are many times used synonymously. A mortgage in Alabama, is the conveyance or transfer of property, either real or personal, as security for a debt or in discharge of some obligation.—**Williams v. Davis**, 45 So. 908, 154 Ala. 422. A pledge, as defined by the Alabama Courts, is a transfer of personal property as security for a debt of other obligation, a bailment of personal property by a debtor to his creditor to be kept by him until the debt is discharged; the essential element being, first, that the possession of the pledged property passes from the pledgor to the pledgee, second, that the legal title remain in the pledgor, and third, that the pledgee have a lien for the payment of a debt due him by the pledgor or some other person.—**Rolfe v. Huntsville Lumber Co.**, 62 So. 537, 8th Ala. App. 487. So, it is clear that a lease is a thing entirely different from a mortgage or a pledge.

The Alabama Public Service Commission has only such authority as is given to it by the statutes. I am unable to find any statute which requires the Commission to give notice of twenty days, to hold the hearing and to require the payment of the application fee of \$25.00 where a lease is involved, as set out in the second and third paragraph of your letter. The statute requiring the notice, the hearing and the payment of the application fee of \$25.00, applies only in those cases where the certificate is mortgaged, sold, transferred, assigned or pledged, and the statute does not apply in those cases where the certificate is merely leased, for the very good reason that "lease" is not included in the statute.

Your second inquiry has been answered above. Since the statute does not include leases, it is immaterial that the lease includes one or two or three certificates. The Commission would be without authority to require an application fee under the facts set out in your second inquiry.

Your fourth question has been answered hereinabove.

In answer to your fifth question, I would not say that any lease, regardless of the duration of time of the lease would not fall under the influence of Section 4 and 5, relating to notices, hearings and the payment of fees. It is my judgement that it would be possible to frame a lease in such words as that the lease would, in effect, amount to a sale. I do not intend to hold here that a lease, for example, for ninety-nine years, would not require notice, a hearing and the payment of a fee. What I do hold is, that the statute does not require the Commission to issue notice, hold hearings and require the payment of filing fees in cases where a lease of a certificate and properties is involved, where the lease is for one year. This is not to say that the Commission is without power to hold a hearing in the case of any particular lease, if there are in the judgement of the Commission circumstances which reasonably justify such hearing. In my opinion this is a matter of discretion in the Commission. It is proper, of course, that every such lease should be approved by the Commission, but whether a hearing should be held, lies in the reasonable discretion or the Commission, in cases where the lease does not exceed one year. It is not for this office to say that the statute should be amended in such a way as to include transactions involving leases. This is not our province, but we do make bold to say that perhaps the statute should be amended. In cases where the lease is in effect a sale of the properties and the certificate (as in the case of a ninety-nine year lease) my judgment is that the Commission must treat such a lease just as though it were a straight sale, following the statute in the matter of notices, hearings and payment of fees

It will be noted that in some of the cases hereinabove cited, the word "lease" is used in connection with real estate, It appears that in most cases "lease" is used in connection with real estate transactions. However, I am unable to find any authority to the effect that a certificate of convenience and necessity may not be the subject of a lease, with the approval, of course, of the Public Service Commission. If "A" desires to turn over or lease to

"B" his certificate of convenience and necessity for one year and desires to call the transaction a lease, then I do not know any law which would prevent him from doing this very thing. Such a transaction certainly would not be a mortgage, a sale, an assignment, a pledge or a transfer. While the term "lease" is usually applied to real estate, I know of no law, neither can I find any law which says that this personal property may not be the subject of a lease. The definitions of "lease" do not say that the term may not be applied to property other than real estate.

It is quite evident that the word "transfer" as used in the Act, means the transfer of the title. It would require a rather strained construction of the word "transfer" as used in the Act, to hold that "transfer" means a lease. I do not believe it does.

I come now to the second set of facts set out at the top of page 2 of your letter. These facts follow:

"John Doe is a motor transportation company under said Act, operating in the transportation of passengers and small packages of goods between certain termini. He executed a single instrument to Richard Roe under which he leases his certificate of public convenience and necessity No. 100 to the said Richard Roe for a term of 37 days, and under said instrument he grants to the lessee the right to purchase his said certificate outright for a stated amount, and the grantee under said instrument, by the instrument itself, notifies the lessor that the lessee desires to exercise its option to purchase said certificate, Richard Roe presents said instrument to the Commission for its appropriate action thereon."

John Doe enters into a written lease agreement, under the terms of which John Doe leases his certificate No. 100 to Richard Roe for a period of 37 days. In the lease agreement Mr. Roe is granted the option of purchasing the certificate at the expiration of 37 days. This instrument is presented to the Commission.

In answer to question (a), in my judgement only one fee is required under the facts just detailed. No fee is required because of the lease of 37 days, because the Alabama Motor Carrier Act is silent on the question of leases. It appears to me that under the facts set out above the procedure should be as follows: When the lease agreement is presented to the Commission the Commission is put on notice that a sale will be consummated at an early date. Within a reasonable time after such instrument has been presented to the Commission the Commission should fix a time and place for hearing the same; not for hearing the part relating to the lease, but for hearing the part relating to the sale. Conditions might arise under which it would become necessary for the holder of a certificate to immediately turn over his property to some other person. The law does not require the impossible. For example, it becomes necessary for "A" to immediately turn over his transportation company to "B". "B" is without a certificate and the law says twenty day's notice must be had before "B" can be given a certificate. The law also

says that a hearing must be had and a fee of \$25.00 paid. Under these circumstances "A" executes a lease to "B" for a period of 37 days. The lease is presented to the Commission at once. Under the terms of the lease "B" is given the right or option to purchase at the end of the 37 days. The 37 day option is placed in the lease for the purpose of allowing "B" ample time in which to go through the procedure set out in the law. Under these circumstances, I do not think the Commission violates any law by allowing "B" to run the transportation company of "A" for the 37 days mentioned in the lease. In my judgement the law is complied with upon the giving of a notice the having of a hearing and the payment of one fee of \$25.00. To hold that "B" could not conduct the transportation company of "A" until twenty days have elapsed might result in great injustice to "A". I do not believe the laws ever contemplated that this should be done. Let us suppose that "A" suddenly becomes disabled in a way that will prevent him forever from conducting his business. "A" has spent several years in building up his business. To abandon the business for a period of twenty days might mean not only the loss of much revenue but might mean the total loss of his business. "B" desires to purchase the business and does this immediately and carries on the business until he can procure a permit. I do not believe the Commission is violating any law by allowing "B" a reasonable time within which to procure his certificate. I do not think a period of 37 days is unreasonable.

In answer to inquiry (b), no application is required by the Motor Carriers Act so far as the lease is concerned, but an application is required in order that title to the certificate may pass. I do not think it is possible under the law to pass the title to the certificate without giving notice, having a hearing and requiring the payment of the fee. In my judgment the statute would be complied with if the application to transfer or sell the certificate be set down for hearing and notice given under Section 4.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 3, 1933.

Hon. Grover C. Hall,
Judge of Probate,
Montgomery, Alabama.

Assumption of liability certificate of National Surety Corporation of bonds previously written by the National Surety Company properly filed and recorded, held to continue the original bonds for the term of the original appointment.

Probate Judges entitled to fifteen cents per hundred words for recording such assumption, but not to fee of one dollar for the approval of same.

Opinion by Assistant Attorney General Moore.

Dear sir:

I have your letter of May 12, 1933, in which you state:

"The National Surety Company is surety on a number of bonds filed in this office by Notaries Public. This Company is in the hands of a rehabilitator appointed by the Supreme Court of New York on a bill filed by the Insurance Commissioner of that State. A receiver of that Company has been appointed also in Alabama.

"National Surety Corporation has been formed to take over most of the business of the old Company and proposes to file in this office a paper called 'assumption of liability certificate', covering each of said notary bonds. A copy of one of these is hereto attached.

"I wish to be advised on the following points: One: Am I authorized to accept such a document and treat it as a part of or amendment to the original bond filed by the notary. Two: If so, will it have the effect of continuing the original bond for the term of the original appointment. Three: Will it be sufficient to file this document with the bond without recording, and if it should be recorded, shall I charge the usual fifteen cents per hundred words therefor. Four: Should I charge any additional fee for the acceptance of the instrument, such as the fee of \$1.00 already paid for the approval of the original bond.

"I am informed that this Company carries about three thousand such bonds and it is a matter of considerable importance to have these questions settled."

In answer to your several inquiries I advise as follows:

First, in my opinion you are authorized to accept the document entitled "assumption of liability certificate" as a part of or amendment to the original bond filed by the Notary.

Second, this in my opinion, will have the effect of continuing the original bond for the term of the original appointment.

Third, in my opinion it will not be sufficient to file this document with the bond without recording. Section 2609 of the Code of Alabama, 1923, provides as follows:

"Each official bond required by law to be filed with any public officer must be by such officer recorded word for word in a well-bound book and properly indexed."

As the assumption of liability will operate along with the original bond as one complete instrument, in my opinion it is necessary for the assumption

to be recorded. I presume that Probate Judges are authorized to charge the fifteen cents per one hundred words for the recording of this instrument.

Fourth, it is my opinion that no additional fee for the acceptance of this assumption such as the fee of one dollar already paid for the approval of the bond should be charged.

For purposes of convenience it would seem that some marginal notation should be made on the original bond showing the proper reference to the assumption certificate when the latter is recorded.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 4, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Clerk's fees for making transcripts.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 15, 1933, in which you request my opinion as follows:

"Will you give consideration to the following statement of facts and advise as to the questions asked?

"Under Section 3739 and 7278, Code of 1923, Clerks of the Circuit Court are entitled to 15c for each 100 words for record for Supreme Court or Court of Appeals. Section 6102 provides for the making of the transcript and fee for making same, which fees correspond with fees listed in Sections 3739 and 7278. Section 6102 is a new Code section and comes from an Act, General Acts 1919, page 84. The title to this Act refers to Appeals in both Civil and Criminal cases. Section 6108 provides for a copy of the record of appealed cases and a fee of \$2.50 is provided for such copy. Section 6108 is a new Code Section and comes from an Act, General Acts 1915, page 336 and refers to all courts from which an appeal lies.

"1. Is the Clerk of the Circuit Court entitled to \$2.50 for making such office copy to be taxed as part of the costs, in criminal cases?

"2. Is the Clerk of the Circuit Court entitled to \$2.50 for making such office copy to be taxed as part of the costs, in civil cases?"

You will note that Section 6102, Code of Alabama, 1923 was passed by the Legislature and approved February 15, 1919, and is Section 2 of the General Act regulating appeals to the Supreme Court and Court of Appeals, and is as follows:

"6102. Transcript made by clerk; fees for.—After taking an appeal in the manner herein provided, and filing in the cause a bill of exceptions, or the expiration of the time for filing such bill of exceptions, or if the appellant sooner direct, the clerk, the register or judge of probate, as the case may be, shall make out a transcript as required by law, and deliver the same to the appellant. He shall in making the transcript make a copy thereof for the appellee and deliver it to him or his attorney, and for the transcript he shall have ten cents for each one hundred words and for the copy five cents for each hundred words, both of which shall be taxed as costs against the unsuccessful party in the appeal. The appellant shall be entitled to procure a copy of said transcript by paying therefor at the rate of five cents for each one hundred words; provided the appellant make request of the clerk, register or judge of probate before the preparation of the original transcript."

You will note further that this section has reference to the original transcript filed with the Clerk of the Supreme Court or the Clerk of the Court of Appeals and the copy which is to be forwarded to the appellee where the same is seasonably requested, and has reference to nothing else.

You will also note that Section 6108, Code of Alabama, 1923, was passed by the Legislature of 1915, General Acts, 1915, page 336, and is as follows:

"6108. Copy of record of appealed cases kept by clerks; fees for.—The clerks of all courts from which an appeal lies to the supreme court or court of appeals, shall be required to make and keep on file in their office an exact copy of the record in all cases certified to said supreme court or court of appeals for use by the parties to such cases. And such clerks shall be permitted to charge, to be taxed as costs of appeals in such cases the sum of two dollars and fifty cents for such copy of the record."

The above quoted section says among other things: ". . . shall be required to make and keep on file in their office an exact copy of the record in all cases certified to said supreme court or court of appeals for use by the parties to such cases." This refers only to the copy he is required to make and keep on file in his office for the inspection of the parties interested, and it further provides for making this copy he is entitled to charge a fee of \$2.50. This is a separate and distinct charge from the one set out in Section 6102 supra, and is for performing a different service from those provided for in

Section 6108. There is no conflict in these two sections, and it is my opinion the clerk is entitled to such fee in both criminal and civil cases.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 4, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

A statute which provides that each utility doing business in this State and subject to the control and jurisdiction of the Alabama Public Service Commission with respect to its rates and service regulation, shall pay annually to the State on or before February 1st of each year, a fee for the inspection and supervision of such business, and that such inspection and supervision fee shall be measured by the amount of the gross receipts of each such utility for the calendar year next preceding the date therein fixed for the payment of the same, provides a fee covering the calendar year next preceding the date fixed in said statute for the payment of such fee. If such a utility transfers its utility properties during a calendar year, the transferee is liable for such fee covering the period from the beginning of said calendar year to the date of said transfer, the fee for such period being payable at the date during the next succeeding calendar year fixed by said statute for the payment of such fee, and the fee to be paid by said transferee covering the calendar year during which said transfer was made shall be measured by the amount of the total gross receipts from operations of the utility properties and business which have been transferred during said calendar year.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

On March 25, 1931, you addressed to me a letter which is in part as follows:

"The following question has arisen in connection with the collection of such inspection and supervision fee, namely: Prior to the beginning of the current year A. B. Co., which was engaged in the utility business in Alabama during 1930, transferred its properties to C. D. Co., and the A. B. Co. will not be doing business in Alabama during the year 1931. The question is—is the A. B. Co. liable for the payment on February 1st of 1931, of the fee for the inspection and supervision of its business? The question may be stated, also in this way: Is the inspection and supervision fee required to be paid by a utility annually to the States,

on or before February 1st of each year, payable for the inspection and supervision of such business during the preceding year, or for the year during which such fee is payable?"

Under date of June 11, 1931, I rendered my opinion on the questions presented in your above inquiry. Since the rendition of said opinion I have given further thought to the matters involved with the result that I have reached conclusions different from those set forth in my said opinion of June 11, 1931, and I hereby withdraw my said opinion of June 11, 1931, and now enter the following as my opinion on the questions presented in your inquiry.

Your inquiry involves a consideration of Sections 9765, 9766 and 9767 of Volume 4 of the Civil Code of Alabama of 1923.

Section 9765 provides that each utility doing business in this State and subject to the control and jurisdiction of the Alabama Public Service Commission with respect to its rates and service regulations, shall pay annually to the State on or before February 1st of each year, a fee for the inspection and supervision of such business. This Section further provides that such fee shall be measured by the amount of the gross receipts of each such utility for the calendar year next preceding the date therein fixed for the payment of the same.

Section 9766 provides that on or before January 20th of each year, every such utility shall file with the Commission a statement, under oath, of the amount of the gross receipts of such utility for the last preceding calendar year.

Section 9767 provides that the State of Alabama shall have a lien upon all the property in this State of any such utility for the payment of said fees, which lien shall be superior to all other liens except the lien for state, county and municipal taxes.

I will first consider the question whether the inspection and supervision fee required to be paid by such utility annually to the State on or before February 1st of each year covers for the calendar year next preceding the date fixed for the payment of said fee or for the calendar year during which such fee is payable. In my judgement, the three above mentioned statutes, whether construed together or separately, are not ambiguous on this proposition, but are merely silent in so far as any express provisions on said proposition and concerned. It therefore remains to ascertain the legislative intent as to this proposition. The underlying principal of all construction is that the intent of the Legislature shall be sought in the words employed to express it, but where, as in the instant matter, the legislative enactment in question fails to state in express words its intent on a certain proposition necessary to be determined in order to give proper effect to the enactment, then, in that instance, the legislative intent as to such proposition must be sought by first determining from the words employed in the enactment the purpose or purposes thereof and then applying said purposes to the subject matter of the enactment. Section 9765 expressly states that the instant fee is a fee

"for the inspection and supervision of such business". In other words, the fee in question is a fee which the Legislature under said statutes required the utility to pay to the State in return for, and on account of, the inspection and supervision of its utility business by the Alabama Public Service Commission. Under the law the Alabama Public Service Commission is required, and it is made its duty to inspect and supervise the utility business of each utility required to pay said fee, and under the law such inspection and supervision by Alabama Public Service Commission of the business of each such utility commences when the operation of such utility business commences. Therefore, since the Legislature expressly provides in said Section 9765 that said fee shall be a fee for the inspection and supervision by Alabama Public Service Commission of such utility business, and under other legislative enactments the Alabama Public Service Commission is required to commence its inspection and supervision of such utility business from the beginning of the operation thereof, it necessarily follows, in my judgment, that the legislative intent is that such fees shall commence to accrue at the commencement of the operation of such utility business. If the aforementioned statutes were construed to mean that the said fee payable to the State on or before February 1st of each year is a fee covering the year in which said fee is payable and is not a fee covering the year next preceding the date fixed for the payment of such fee, then it would necessarily follow that the utility would be exempted from the payment of such fee for the inspection and supervision of its business during the first calendar year of its operation. In my judgment, it is manifest that the Legislature intended that said fee shall commence to accrue at the commencement of the operation of the utility, and, therefore, it is my opinion that the said inspection and supervision fees required by the above statutes to be paid by utilities to the State on or before February 1st of each year are fees covering the year next preceding the date fixed for the payment of such fees.

I will next consider the question whether such fee is payable by the transferor or the transferee in event such a utility transfers its utility properties during the calendar year next preceding the date fixed for the payment of the inspection and supervision fees covering the year in which such transfer is made. The same principles of construction discussed above are applicable here in determining the intent of the Legislature on this proposition. The aforementioned Section 9767 provides that the State shall have a lien upon all the property in this State of any utility for the payment of said supervision and inspection fees. This means, of course, that in event of the transfer of the utility properties, the transferee takes the properties subject to said lien. Under Section 9765 the said inspection and supervision fees are fixed upon a sliding or graduated scale, the fee per \$1,000.00 of such gross receipts becoming smaller in each succeeding bracket of such gross receipts; hence, if a utility should transfer its utility properties and business during the course of a calendar year and the transferor utility were required to pay the inspection and supervision fee based upon the gross receipts by it from the operation of the transferred properties during that portion of the year in which it operated the same, and the transferee utility were required to pay said fee based upon the gross receipts by it from the operation of said transferred properties during that portion of said year in which it operated

them, then it naturally follows that the total of the fees paid by both of said utilities covering said calendar year would usually exceed, and probably greatly exceed, the total fees covering the said year which would have been payable by the one utility in event no transfer had been made during said year. There is nothing in the statutes, expressed or implied, which would lead to a conclusion that the Legislature intended that the amount of these fees payable to the State covering any calendar year should be larger because of the fact that a transfer had been made and more than one utility had operated the same properties during said year. For these reasons, I am of the opinion that it was the legislative intent in the enactment of the statutes in question, that if such a utility transfers its utility properties during a calendar year, the transferee is liable for such fees covering the period from the beginning of said calendar year to the date of said transfer, the fees for such period being payable at the date during the next succeeding calendar year fixed by said statute for the payment of such fees, and I am further of the opinion that the fee to be paid by said transferee covering the calendar year during which said transfer was made shall be measured by the amount of the total gross receipts from operations of the utility properties and business which have been transferred during said calendar year.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 4, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

The Motor Carrier Act of 1931 provides for the payment of filing fees; the Public Service Commission is without authority to return the filing fee after the said fee has been covered into the State Treasury.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of August 1st. Your letter follows:

"On to-wit March 16, 1933 one A. B., filed an application under the Alabama Motor Carrier Act of 1931 to obtain a certificate of public convenience and necessity authorizing applicant to operate as a motor carrier under said Act. The application stated that applicant proposed to use in such operation three trucks to start with.

"The applicant paid a filing fee of \$150.00, that is, a fee of \$50.00 for each motor vehicle proposed to be used by applicant in such operation, such fee being determined by the provisions of said section 5 of the Act.

"The application was set down to be heard, notice thereof given as required by the statute, and the application was heard in accordance with the notice, and the evidence of petitioner was submitted in support of said application.

"Thereafter, on July 24, 1933, the Commission issued its order denying the application.

"The filing fee paid by applicant as aforesaid was duly covered into the Treasury of Alabama in accordance with said Act.

"The applicant has raised the question as to whether the State is entitled to retain said fee of \$150.00, in view of the Commission's denial of said application and we have been requested to secure your opinion on this question.

"We will thank you, therefore, to advise us upon the question presented herein."

The Motor Carrier Act of 1931, found at page 303 of the General Acts, Regular Session, 1931, has been examined. Among other things, Section 5 of said Act provides as follows:

" * * * All said mileage tax, fees and amounts collected under this Act shall be paid into the State Treasury within thirty days after their receipt and shall be kept separate and apart from all other funds by the State Treasurer in a fund to be known as the 'Motor Carrier Fund', and shall be used; first, for the payment of all expenses incurred by the Public Service Commission under this Act and the surplus at the end of each fiscal year, shall be credited one-half to the Highway Department for use in maintenance and repair of highways in the State, and for the enforcement of the provisions of this Act, and one-half to be equally divided among the several counties of the State for use in maintenance and repair of highways in such Counties, and for the enforcement of the provisions of this Act."

Section 21 of said Motor Carrier Act of 1931, provides:

"The expenses incurred under the provisions of this Act, when certified by the Commission or its President, and approved by the Governor, shall be paid on warrant drawn by the proper office in pursuance thereof only out of monies in the State Treasury to the credit of the said 'Motor Carrier Fund.' "

Section 5 of the Act provides for the payment of filing fees. In the case mentioned in your letter the filing fee amounts to \$150.00. This money has been, in accordance with the provisions of the Act, covered into the Treasury. A close examination of the Act reveals that no provision is made for the return of a filing fee, under the circumstances detailed in your letter. The money is in the State Treasury and it is well known that moneys in the State Treasury can be taken out only as provided by law. I know of no provisions of law allowing the withdrawal of this money from the State Treasury. The Act provides exactly how the money shall be withdrawn, but the Act is silent on the question of the withdrawal of filing fees, after the filing fees have been covered into the State Treasury.

I am not holding in this opinion that the money could not be returned by an appropriation by the Legislature.

In my judgement, the Commission is without authority to return the money. Indeed, the Commission is without authority to draw a warrant on the Motor Carrier Fund for this purpose.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 10, 1933.

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama

1. Section 10191 provides for a single fee of \$4.00 in addition to necessary expenses for sheriffs when making investigations which are specifically directed by the Solicitor in writing.

2. Board of Review authorized by Section 54, Acts 1923, page 152, to review, revise, correct and fix assessment values made by Tax Assessors except such as have been approved by the State Tax Commission.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 28, 1933 in which you state:

"I have recently had a murder case in this County that cost me quite a sum of money to investigate. We were about a week on this case.

"Under Section 10190 the Solicitor directed me to do this in writing.

"In filling out my expenses under Code Section 10191 am I to receive \$4.00 per day or just \$4.00 for the complete job. Would it be legal for me to charge a reasonable amount per day for the officer that worked with me?

"Has the Board of Review (that is the Board that raises or lowers taxes) the right to reduce or raise taxes each year as it sees fit. That is, can this Board reduce my taxes this year and next year too, or can they raise them this year and next year too?"

In answer to your first question, I advise that Section 10191 of the Code provides that:

"The expense of such investigation when so ordered shall be paid from the county treasury upon a warrant properly drawn; and after the report is made the sheriff shall file with the board of revenue or court of county commissioners a detailed sworn statement of his expenses accompanied by the written approval of the officer directing the investigations, and the board of revenue or court of county commissioners shall audit and allow only so much thereof as it shall find reasonably necessary unless it is approved by the Governor or Attorney General, in which event they shall allow the amount approved, and for such investigation in addition to his expenses which may include any actual cost of travel that was necessary, the sheriff shall be allowed a fee of four dollars, but if the investigation consumes one day or less, then a fee of two dollars, and the fee and allowed expenses must be paid in each case from the county treasury upon a warrant drawn according to law."

The foregoing Section provides for your expenses in making such investigation. I am of the opinion that the fee of \$4.00 referred to is a flat fee to be paid in addition to the actual expenses but is not a \$4.00 per diem as suggested by you.

In reply to your second question I advise that Section 54 Acts 1923, page 152, being Section 184 of the Revenue Compilation of 1929, provides that the Board of Review shall meet:

"On the second Monday in April and sit at the courthouse of the county from day to day until their duties are completed, which shall not be later than the first Monday in May, and shall review, revise, correct and fix the assessment values made by the tax assessor by raising or lowering the assessment of any person, partnership, corporation or association, except such assessments as have been approved by the State Tax Commission"

This section must be read in conjunction with Section 55, Acts 1923, page 152, appearing as Section 158 of the Revenue Compilation of 1929 which provides in part:

"When a tax return has been so approved by the State Tax Commission, the State has no appeal from such approved assessment. The taxpayer, however, may appeal from such assessment in the same manner and within the same time as appeals are allowed from non-approved assessments."

It, therefore, appears from these two provisions that where the assessment has been approved by the State Tax Commission the Board of Review cannot act thereon but that the taxpayer may appeal from such approved assessment as in other cases.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 10, 1933.

Mrs. Christian Wingard,
County Treasurer,
Wetumpka, Elmore County, Alabama.

How lost witness certificates may be paid.

Opinion by Assistant Attorney General Haynes.

Dear Mrs. Wingard:

I have your letter of September 9, 1933, in which you request my opinion as follows:

"In this county a number of the warrants registered against the Fine & Forfeiture Fund have been lost. Also a number of warrants or certificates have been lost before being registered.

"Please advise me whether or not the Clerk of the Circuit Court who issued these certificates or warrants can legally issue duplicates for them. And if duplicates are issued can the Treasurer legally pay them.

"If there is any way we can pay this money out, would appreciate your advising me."

It is my opinion the clerk, after sworn affidavit is filed with him setting out that the certificates have been lost, their amount, to whom they were issued and the date of issuance, may issue duplicate warrants or certificates marking same duplicate in red ink. It would be the duty of the clerk to search

his records to ascertain if the affidavits speak the truth as to date, name, and amount for which the certificate was issued. Then, as stated above, if he finds it to be correct he should issue duplicate, and the Treasurer could pay the same when legally presented.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 10, 1933.

Hon. J. H. Money,
Judge of Probate, Jackson County,
Scottsboro, Alabama.

Elections—Expenses of Special Primary Election in Eight Congressional District for election of Congressman.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter in which you wish to be advised as to whether or not the county is liable for payment of the clerks, inspectors and returning officers of the Special Primary Election held on September 12, 1933, in the Eighth Congressional District, to elect a successor to the late Edward B. Almon, deceased.

I am of the opinion that your inquiry is governed by Section 7 of Act No. 56, H. B. 73, approved February 25, 1931 (General Acts, 1931, page 73) which provides as follows:

Section 7. That the officers and other expenses of any and all primary elections, general or special, held under the provisions of this Act shall be paid for in the same manner and to the same extent as is or may be provided by law for the payment of the expenses and officers of general elections held under the general election laws of Alabama, and to be paid out of the county treasury in the same manner; provided, however, that the cost of such primary election held for municipalities or for the election of municipal officers or officials shall be paid for out of the treasury of such municipality.

The election in question is such an election within the primary election law as is contemplated by Section 4 of the 1931 Act, *supra*, same being held in accordance with Section 4 of the 1931 Act, *supra*, same being held in accordance with Section 34 thereof, which provides for the filing of vacancies.

As the expenses in question are payable in the same manner and to the same extent as provided by law for expenses for general elections, pay-

ment, therefore, would be made according to Section 509, Code of Alabama, 1923 which is as follows:

509. Pay of election officers.—The returning officer, the inspectors and clerks, shall each be entitled to two dollars, and the returning officer, in addition, to five cents a mile in going to the courthouse and returning to the place of holding the election; the several claims to be paid out of the county treasury, on proper proof of the service rendered, to be preferred claims, payable from the money in the treasury not especially otherwise appropriated.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 10, 1933.

Hon. B. S. Turrentine, Clerk,
Circuit Court, Limestone County,
Athens, Alabama.

Cost of Court in preliminary hearings.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 17, 1933 in which you request my opinion as follows:

"1. When a defendant is arrested on a warrant issued out of our County Court by the Sheriff and bound over to the Grand Jury, and is indicted for a felony, and later tried in the Circuit Court and sentenced to the Penitentiary, is he entitled to Sheriff's fees of \$4.00 or to Constable's fees of \$1.50. If he is only entitled to Constable's fee for making the arrest is the balance a debt against the Fine and Forfeiture Fund The evidence is not reduced to writing in this County Court?

"2. Is the Sheriff's fee for making the arrest considered a part of the preliminary trial under Section 3755, as outlined above.

"3. Under Act of the Legislature 1931, page. 444. When a defendant is sentenced to the Penitentiary, and sentence is suspended by the court for five years, is the costs in this case a tax against the Fine and Forfeiture Fund?"

In answering your inquiry allow me to say that in the first place the County Court has no jurisdiction in preliminary hearings. The Judge of

the County Court does as a magistrate have such jurisdiction. See Sections 5217, 5218 and 5136, Code of Alabama, 1923, which are as follows:

"5218. Upon a complaint being made to any one of the magistrates specified in Section 5136 (7519) that such offense has, in the opinion of the complaint, been committed, the magistrate must examine the complaint, and such witnesses as he may propose, on oath, take their depositions in writing, and cause them to be subscribed by the person making them."

"5136. The judges of the appellate and circuit courts, and courts of like jurisdiction, throughout the state, the judges of probate, the judges of the county courts, judges of inferior courts, and justices of the peace, in their respective counties; and the mayor or chief officer of any incorporated town or city, within the limits of their respective corporations, are magistrates within the meaning of this chapter, and authorized to require persons to give security to keep the peace in the manner provided in the next article."

You will note from Section 5136 supra, that the Judge of the County Court and not the County Court is given jurisdiction in preliminary hearings, and this is done by said Section which designates him as a magistrate.

Therefore, answering your first inquiry, if the defendant is charged with a felony, you are entitled to \$4.00 for the arrest; if he is not charged with a felony, you are only entitled to \$2.00. See Section 3741, Code of Alabama, 1923, which is in part as follows:

"For executing warrant or writ of arrest in misdemeanor cases
..... \$2.00.

"For executing warrant or writ of arrest in felony cases
\$4.00.

Further answering your inquiry, I call your attention to Section 3755, Code of Alabama, 1923, which is as follows:

"3755. Whenever a defendant is convicted and sentenced to the penitentiary, or to hard labor, the costs of the committing magistrate and constable on preliminary trial, both together, not to exceed ten dollars, and the fees of the state's witnesses before the committing magistrate, not to exceed ten dollars shall be taxed in the bill of costs in the same manner, and paid out of the same fund, at the same time and in the same way, as is provided by law for the payment of other items of costs incurred by the state; but the committing magistrate shall receive no pay unless he reduces to writing the evidence taken on the preliminary trial, as required by law."

I am of the opinion that no costs that originated on a preliminary hearing, or any balance of cost that may remain after applying the above Section, could not be charged up to and collected out of the Fine and Forfeiture Fund of the County as this is not a part of the cost of the Circuit Court or the County Court.—**Hawkins vs. State**, 124 Ala. 102.

My answer to your second inquiry is in the affirmative.

Answering this request I have but to say that this office has repeatedly held that the Judge of the various Circuit and County Courts have no authority to suspend sentence for costs.

Opinion of Attorney General (Off. Ed.)
Book 14, pp. 74, 131, 285.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 10, 1933.

Col. Page S. Bunker,
State Forester,
CAPITOL.

Forests—Construction of Acts 1931, page 165 as extended by Acts 1933 page 113.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 16, 1933, in which you state the following facts:

"For some years there has been located in Alabama, principally in Winston and Lawrence Counties, a National Forest comprised of lands already in the title of the United States at the time of establishment of such Forest or lands purchased by Federal authority, the entire National Forest being circumscribed by a definite exterior boundary. The consent of the State to the purchase of land for National Forest uses was granted by Section 18½ of an Act of the Alabama Legislature approved November 30, 1907.

"In 1923, in an amendment to the above mentioned Act, Section 18½ was repealed through omission from the amended Act (General Acts of Alabama, 1923, p. 638). In 1931, by an Act of the Legislature approved March 4, 1931, (General Acts of Alabama, 1931, p. 165), the consent of

the State was granted for the acquisition of lands by the Federal Government within the exterior National Forest boundaries, the Government having requested permission to continue the purchase of lands within such exterior boundaries of the existing National Forest for the purpose of consolidating its holdings for convenience in administration and other obvious reasons. In 1933, in extraordinary session, the Legislature extended the provisions of the Act of 1931 to include the drainage area of the Tennessee River (General Acts of Alabama, Extra Session, 1933, p. 113.)

In view of the above, you request my opinion as to whether or not the Acts of the Legislature of 1931 and 1933, above referred to, give consent of the State to the acquisition by the United States for National Forest purpose of lands in Southern Alabama, by this term meaning lands near the coast or situated at a considerable distance from the exterior boundaries of the National Forest and from the Tennessee Valley.

I am of the opinion that your inquiry should be answered in the negative.

The provisions of the 1931 Act in question (Acts 1931, page 165) are limited lands within the National Forest boundaries. The 1933 Act (Acts 1933, page 113) merely extends the 1931 Act to include lands within the watershed or drainage areas of the Tennessee River in Alabama as may be selected and approved for acquisition for National Forest purposes by the United States in the manner prescribed in said Act.

Unless the lands sought to be acquired by the United States for National Forest purposes are such lands as fall within the classes above set out, the provisions of the 1931 Act in question do not apply.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 10, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

In providing a mileage tax, to be paid by contract carriers and common carriers (as defined in the Motor Carrier Act of 1932,) the Legislature did not impair the obligations of a road contract entered into before the passage of the said Act and did not impair the obligation of a contract entered into by the original contractor with a sub-contractor, even though the Act increases the contract price agreed upon before the passage of the Act.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of July 24th, 1933, in which you enclose copy of letter from the Wesco Company to the Alabama Public Service Commission, bearing date of July 19, 1933, both of these letters follow:

Enclosed herewith we hand you copy of letter of July 19th, 1933, addressed to our Commission by the Wesco Company, Mr. M. N. Levanthal, President, of Chattanooga, Tennessee.

Enclosed herewith also we hand you copy of letter from Messrs. Miller, Miller & Martin, Attorneys, of Chattanooga, Tenn., of date March 22nd, 1933, addressed to you.

Please advise the Public Service Commission if the said truck operation referred to is such an operation as brings it within the jurisdiction of the Commission under House Bill 113—Tidwell.

Alabama Public Service Commission,
Montgomery, Alabama.

Attention Mr. W. G. Hall,
Transportation Bureau.

Gentlemen:

Your letter of July 11th, addressed to Mr. R. L. Patterson, Russell Erskine Hotel, Huntsville, Alabama, with reference to mileage tax, has been referred by Mr. Patterson to us for a reply.

Our connection with this matter is as follows. Under date of September 20th, 1932, we entered into a contract with the State Highway Department of Alabama for the construction of a certain project as E. F. A. P. 171-A Limestone County, Alabama, being a portion of the road between Huntsville and Athens. After receiving award of this contract by the State we entered into an agreement with the above R. L. Patterson for all of the hauling of materials in connection with this contract. Subsequent to our making the contract with the State and with Mr. Patterson the Tidwell Act was enacted and our contract with Mr. Patterson did not provide for the payment of any mileage taxes on hauling since at that time we had no knowledge of such a tax having ever been proposed, therefore when Mr. Patterson was confronted with licensing his trucks he very justly refused to assume any responsibility for this tax.

Sometime during the early part of March of this year, our representative, Mr. George O. White, discussed this matter with Mr. A. C. Carmichael, the Assistant Attorney General, and subsequent thereto, under date of March 22nd, a letter addressed to General Carmichael was

mailed by our Attorneys, Messrs. Miller, Miller & Martin, a copy of which letter is herewith inclosed. Under date of March 31st, 1933, our Attorneys received reply from General Carmichael, copy of which is also enclosed.

In view of the facts presented by our Attorneys and the Attorney General's reply it appears to us that this particular hauling contract should be exempted from the tax for the reason that this particular tax was not specifically intended and is not within the spirit of the meaning of the said Act.

It seems inequitable to us that the State would award us a contract at a fixed amount and after enact a law placing a heavy tax on a portion of it to be returned to the State Treasurer.

We request that you submit these facts to General Carmichael for his ruling since his letter of March 31st indicates clearly that he is in accord with the views of our Attorneys in this matter.

Thanking you in advance for your consideration and requesting that future correspondence in connection with this matter be addressed to us rather than Mr. Patterson, we are

Yours very truly,
THE WESCO COMPANY,
(Signed) M. N. LEVANTHAL,
President.

You desire to know if the operation of the trucks by Mr. Patterson (set out in the letter of the Wesco Company to the Alabama Public Service Commission) falls under the influence of the Motor Carrier Act passed at the Extra Session of the Legislature of 1932 (sometimes referred to as House Bill 113 by Tidwell) and found on page 178 of the General Acts of the Legislature of 1932. This act provides for the payment of a mileage tax, the procurement of certain permits, and the payment of certain fees, etc.

As I understand, the facts set out in your inquiry are as follows: On September 20, 1932, the State Highway Department entered into a contract with the Wesco Company for the construction of a certain project known as E. F. A. P. 171-A, Limestone County, Alabama, being a portion of the road between Hunstville and Athens. Bids were accepted, as provided by law, and the bid for this work was duly and regularly awarded to the Wesco Company. The Wesco Company, in turn, entered into a contract with an individual, Mr. Patterson. The contract between the Wesco Company and Mr. Patterson, provided, in substance, that Mr. Patterson would do all the hauling of materials to be used in the construction of said road. Both of these contracts: The contract between the State Highway Department and the Wesco Company for the construction of the road, and the contract between the Wesco Company and Mr. Patterson, were entered into prior to

October 28, 1932, the last named date being the date on which the Motor Carrier Act of 1932 was approved.

The Motor Carrier Act of 1932 provides for the regulation of common carriers and contract carriers, as defined in said Act, and also provides for the payment of a certain mileage tax. At the time of the execution of the two contracts mentioned above, there was no law in Alabama requiring the payment of a mileage tax and none of the parties to either one of the contracts considered the payment of a mileage tax.

Both the Wesco Company and Mr. Patterson are complaining about having to pay the mileage tax provided by the Motor Carrier Act. The Wesco Company says that the State is acting unfairly in exacting the mileage tax under the particular circumstances surrounding this case. Mr. Patterson says the same. The question is, whether or not the operations of Mr. Patterson, in hauling the materials for the Wesco Company fall under the influence of the Motor Carrier Act of 1932; that is, whether Mr. Patterson is a common carrier or a contract carrier. If he is either, he must pay the mileage tax provided in said Act.

It is my judgment that Mr. Patterson must pay the mileage tax. Mr. Patterson, in my judgment, under said act, must qualify before transporting materials for the construction of the said road.

The paramount question involved in your inquiry is one of the impairment of the obligations of a contract. The position of Mr. Patterson is that his contract is based upon the contract between the State Highway Department and the Wesco Company, at which time a mileage tax was not required by law. Both the Wesco Company and Mr. Patterson insist that when the State, acting through the Legislature, passed the Motor Carrier Act, it thereby impaired the obligations of the contract between the State Highway Department and the Wesco Company and between Mr. Patterson and the Wesco Company; that on account of the passage of the Act, the contract price was decreased; that this decrease in the contract price reflected itself all the way down the line.

In passing, we might state that the Motor Carrier Act of 1932, is a strictly police regulation. The Act was passed by the State Legislature in the exercise of its police power over public roads in the State of Alabama.

Section 16, of Article IV, found on pages 181 and 182 of the said Act, provides as follows:

(b) Contract carriers: Section 16: It is hereby declared that the business of contract carriers is effected with a public interest; that the welfare of the public, and the preservation and maintenance of an adequate and efficient system of transportation for the public, and the integrity of the State's regulation of such system of transportation, require the regulation of contract carriers to the extent herein provided.

In deciding the question involved we shall consider both the contract between the State Highway Department, and the Wesco Company and the contract between the Wesco Company and Mr. Patterson. The same law governs both contracts.

I am unable to find any decision by the Courts of this State on this question. The courts have discussed the question on many occasions but not in the light of the facts in this case. The principal involved is ably discussed in Section 3686 at page 6374 of Vol. 6 of Page on the Law of Contracts. Sec-3686 provides:

3686. Modification of tax laws in absence of contract. If no contract exempting property from taxation or fixing the rate of taxation thereon exists, a subsequent statute increasing the burden of taxation or assessment is valid. This clause does not therefore make invalid statutes which tax pre-existing contract rights, or property rights in the absence of a valid contract for exemption from taxation. A state may tax bonds which it has issued, if they were not made exempt from taxation by special agreement, or it may, as far as this provision is concerned, require the mortgagor to pay the tax upon the mortgage and deduct it from the interest, or require a bank to pay a tax upon a deposit and deduct it from the amount thereof. While it has been said that the state cannot retain interest upon its own bonds, or require debtors so to do, if the bonds are owned by non-residents, this involves the question of due process of law, since the state is attempting to tax debts which are owing by its citizens to non-residents. The question of due process of law is not considered here, and the question of the obligation of the contract is not involved, especially if the tax statute was enacted before the bonds were issued. A state may impose a tax upon an income paid to its citizens through trustees, or a tax upon inheritance, including a tax upon the interest of the joint tenant who dies first, and the community property which passes to the surviving wife, or upon a legacy which is given by will in satisfaction of an anti-nuptial contract, or upon a legacy which is given in performance of a contract to devise property, or upon a transfer under a power. A new method of determining the value of stock in a domestic corporation does not impair the obligations of a contract. One who has bought a tax certificate on land may be compelled to pay subsequent taxes or assessments.

If the contract between the State of Alabama and the Wesco Company had contained a provision to the effect that the contract would not be affected in any way by any tax legislation passed after the execution of the contract, the law would be different, but no such provision was placed in the said contract. Neither was there any such provision as this in the contract between the Wesco Company and Mr. Patterson. If either contract had contained a provision to the effect that the hauling of materials would be free from taxation of any description, the law would have been different. The law involved in this case is very ably discussed by Mr. Justice Blatchford in the

case of *Sioux City Street Railway Company vs. Sioux City*, 138 United States Reports, p. 98. We beg to quote the holding in that case:

On December 12, 1883, the city of Sioux City in Iowa, by ordinance conferred on a street railway company, incorporated December 6, 1883, under the general laws of Iowa, the right of operating a street railway, with the requirement that it should pave the street between the rails. Subsequently, under an Act of 1884, the city, by ordinance, required the company also to pave the street for one foot outside of the rails, and assessed a special tax against it for the cost of the paving outside of the rails; Held that there was no contract between the company and the State or the city, the obligation of which was impaired by the laying of the tax.

Under section 1090 of the Code of Iowa, which was in force when the company was incorporated, its franchise was subject to such conditions as the legislature should thereafter impose as necessary for the public good.

The prohibition against State laws impairing the obligation of contracts does not take away the general legislative powers of the states although existing contracts may be affected by their exercise. Nor is the power of levying taxes for the purposes of the government impaired by the prohibition against taking private property without due process of law, or without just compensation.—19 Wall. 666. The power of taxation is essential to the existence of the government, and to enable it to secure the means of accomplishing the purpose for which it was created.—Section 1085 at page 1046 of Vol. 2, 2nd Edition, *Norawetz on Private Corporations*, and the cases cited therein; Section 1061 and Section 1062 at pages 1022 and 1023, Vol. 2, 2nd Ed. *Norawetz on Private Corporations*; Section 1066, 1095 and 1097 of Vol. 2, end *Ed Morawetz on Private Corporations*; *Railway Co. vs. Philadelphia*, 101 U. S. Reports, 528; *Spring Valley Water-Works vs. Schottler*, 110 U. S. Reports, 347.

Notwithstanding the fact that it appears to work a hardship on the Wesco Co., and Mr. Patterson, we are constrained to hold that, if there are extra burdens added by the passage of the Motor Carrier Act of 1932, the Wesco Co. and Mr. Patterson must bear these burdens. Neither the Wesco Co. nor Mr. Patterson is entitled to any deduction because of the passage of the law. It is quite evident that the passage of the Motor Carrier Act providing for the payment of mileage tax, will place an expense on both the Wesco Company and Mr. Patterson, not contemplated or considered at the time of the execution of either contract. But it is equally clear that the State violates no provision of the State Constitution nor of the Federal Constitution in providing for the payment of the mileage tax mentioned, in the Motor

Carrier Act.—*Railway Co. vs. Philadelphia*, 101 U. S. Reports, p. 528; *Wells vs. Savannah*, 181 Ala. p. 531; *Noble State Bank vs. Haskell*, Vol. 219 U. S. Reports, p. 104.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 16, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Trial Tax—when collectible.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 1, 1933, in which you request my opinion as follows:

“Should a trial tax be charged in each and every case placed on the dockets, whether it be an original case, garnishment proceedings on an original, or any **ansillary proceedings**? (It is understood that workmen’s compensation cases are not considered in this question)?”

Section 4½ of an Act of the Legislature approved September 15, 1919, which has to do with trial tax, was amended by the Legislature of 1931 (General Acts 1931, p. 604), so as to read as follows:

“An Act

“To amend Section 4½ of an Act of the Legislature approved September 15th, 1919, entitled an Act ‘To provide for the General Revenue of the State of Alabama.’

“BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

“Section 1. That a trial tax of Three Dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which is now pending and which hereafter goes upon the docket of any circuit court of this state, to be taxed and collected as other costs, and when collected to be paid by the clerk or register of such court as follows: one-half thereof into the general funds of the State Treasury, and the other half into the general funds of the county in which the same is collected and

for collecting and remitting such tax, the clerk or register may retain 5% Commission thereof.

"Section 2. That in all counties in this state, where the clerk or register is paid a salary out of the County Treasury that the 5% commission provided for by Section one (1) of this Act shall be collected and retained by such clerk or register and paid into the County Treasury.

"Section 3. That all laws and parts of laws in conflict herewith are hereby expressly repealed.

"Section 4. That this Act shall become effective immediately upon its approval by the Governor."

It is my opinion that this Act is intended to cover all cases, civil, criminal and equity which go upon the docket of the Circuit Court. I am further of the opinion that this simply means all original cases. For example: a suit is filed in assumpsit and an attachment is issued on the same. This can be but one suit and subject only to one trial tax. Again a suit filed in detinue for the recovery of specific property and a claim is filed which results in a claim suit in which the property rights are tried. This is one and the same matter, and only one trial tax can be collected. Likewise are garnishment proceedings.

In other words, all suits or petitions filed which are purely ancillary and which are a part of an original action are not subject to this tax.

All opinion of this office heretofore rendered, in conflict with the above, are hereby overruled and withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 17, 1933.

Hon. H. H. Montgomery,
Superintendent of Banks,
CAPITOL.

A State Bank, operating under restrictions, as provided by an Act of the Legislature approved March 9, 1933, is authorized to borrow money and pledge its assets as security therefor, and to pay out or distribute the said money in the form of dividends to its depositors, provided said action of the said bank is done and performed in pursuance of a formerly adopted and approved rule and regulation of the State Banking Board, as provided by an Act of the Legislature of Alabama approved March 8, 1933, and provided said action of the said bank, in borrowing pledging

and distributing is supervised and approved by the Superintendent of Banks of the State of Alabama.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge the receipt of your letter of August 25th. Your letter follows:

"Will you please advise if a bank operating under restrictions by order of the Banking Board, under the provisions of Act approved March 9, 1933, has authority to borrow money and pledge its assets to secure amount borrowed, for the purpose of making distribution to depositors?"

"It was the intent of the Banking Board to confer such authority for the operation of restricted banks, to the extent that no creditor could be preferred one over the other in the distribution of its assets. Otherwise to do a normal banking business collecting their assets and accepting 'trust deposits,' to be payable on demand.

"Enclosed herewith is copy of the Permit which was issued to those banks for restricted operation following the Bank Holiday, and in compliance with the act above referred to."

My understanding is that the bank in question is now operating on a restricted basis, or under restrictions, as provided in an Act of the Legislature of Alabama, approved March 9, 1933, which Act is found at page 32 of the General and Local Acts of Alabama, Extra Session, 1933. I have examined carefully the Act just mentioned. I am unable to find anything in this Act which authorizes a bank, operating under restrictions by order of the Banking Board, to borrow money and pledge its assets as security therefor, and to distribute the borrowed money to its depositors as dividends.

I have examined all the Acts relating to banks and banking enacted by the Extra Session of the Legislature of 1933, and by the Regular Session of the Legislature of 1932; I have also examined all of the other statute law of this State relating to banks and banking, including an Act approved by the Legislature of Alabama on March 8, 1933, which Act is found at page 20 of General and Local Act of Alabama, Extra Session, of 1933. This Act provides that:

"Section 1. Whenever, in the opinion of the Superintendent of Banks, it shall be deemed desirable in the public interest, the Superintendent of Banks shall be authorized, with the concurrence of not less than two other members of the Banking Board, to promulgate or approve such rules or regulations with respect to banking practices, business and-or transactions within the State or within any community or locality therein, as shall, in his opinion, be deemed necessary, such rules or regu-

lations to continue in force for such period as may be fixed by him in promulgating the same and until modified, suspended or terminated as hereinafter provided.

"Section 2. Any such rule or regulation may be extended, modified, suspended or terminated by the Superintendent of Banks with like concurrence, or by a majority of the Banking Board by filling their written concurrence to that effect with the Superintendent of Banks, who shall thereupon forthwith give effect to the same.

"Section 3. This Act shall take effect immediately upon approval by the Governor."

Under the Act just quoted, it is my judgement that the bank mentioned in your letter would have authority, with the approval of the Banking Board, to borrow money and pledge its assets as security and to use said borrowed money for the purpose of making distribution to depositors. Such action on the part of said bank must be in pursuance of a ruling of the State Banking Board, as provided in the Act just quoted. In other words, I suggest the following procedure: Let the State Banking Board formally adopt, in the manner provided by law, a rule and regulation to the effect that banks operating under restriction, and situated as the bank in question is situated, may, under the direction and supervision of the State Banking Board, and with the approval of the State Superintendent of Banks, borrow money and pledge the assets of the said bank as security therefor, and distribute or pay out the said borrowed money in the form of dividends to depositors.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

October 17, 1933.

Hon. John S. Pollard,
Tax Assessor, Dallas County,
Selma, Alabama.

Compensation of Tax Assessor.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 17th relative to your compensation as Tax Assessor of Dallas County. You inquire as to whether or not you are entitled to the emoluments of your office which accrued prior to the passage of the Sparks Amendment, which emoluments accrued during the 1932 tax year.

I am of the opinion that whatever emoluments of your office which have accrued and are payable at this time or prior hereto, should be paid to you. The fact that the Sparks Amendment was ratified by the people does not operate to withhold your compensation from you. You are certainly entitled to the compensation at least provided by the Sparks Amendment. If, ultimately, this so-called Amendment should be held to be of no force and effect, then you would be entitled to the compensation as Tax Assessor, which existed prior to the adoption of said Amendment. But, at any rate, you are entitled to at least that compensation allowed in the Sparks Amendment or that compensation allowed by theretofore existing statutes after applying the Sparks Amendment to the same.

I am of the opinion that the provisions of the Sparks Amendment limiting the compensation of any officer of this State to \$6,000.00, means \$6,000.00 net to such officer for performing the services he is required by law to perform.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 21, 1933.

Dr. L. N. Duncan, Director,
Extension Service,
Alabama Polytechnic Institute,
Auburn, Alabama.

Construction of Section 224 of the Constitution of 1901, relating to debt limit of counties.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of September 12th has been received. Your letter follows:

"In the administration of the emergency agricultural measures enacted by Congress for the relief of our farmers it is necessary to have a county farm and home demonstration agent in each county who are trained and capable to work with the business and farm people in bringing the benefits of these acts to the counties.

"The taxpayers, probate judge and the boards of revenue are willing and anxious to cooperate but in some cases there are some legal handicaps. This is especially true of Pike and Shelby Counties because of the indebtedness on outstanding obligations.

"Is it possible for you to advise the boards of revenue in these counties as to some legal way by which they may make appropriations for the support of county farm and home demonstration agents?

"Any help that you may render along this line will be greatly appreciated by the people of these counties. The farm people are especially anxious for this service. It is almost essential that they have these agencies in these critical times.

"We are exceedingly anxious to bring to the farm people of Pike County and other counties the full benefit of the emergency agricultural relief measures. Of course, it is practically impossible to do this without capable, trained and able men and women stationed in the counties.

"As a result of the recent cotton acreage adjustment campaign it is generally conceded that cotton will be 10c or above. But for this campaign it is quite likely that cotton would have been selling now for around 5c per pound.

"It is hardly possible to estimate the value to our farm people and to the State as a whole the difference between five and ten cent cotton to our farmers this fall.

"In addition to this we are busily engaged in distributing to our farmers approximately \$10,000,000 in cash for cotton taken out of production. Our careful and conservative economists estimate that this work will mean more than \$12,000,000 in cash to our farm people in Alabama for the present crop.

"In Pike County there is being distributed to the farmers something over \$150,000.

"The future plans for this emergency work are even more comprehensive, and will thus be far more valuable than the recent campaign.

"Because of the urgent need for immediate action in the recent campaign we were able to get enough funds temporarily to keep a man for a short while in Pike County.

"Instructions for the future make it practically essential that local funds from the Board of Revenue be made available.

"In a telegram from Mr. C. A. Cobb, dated September the 19th, he says:

" 'Administration expecting financial cooperation in all cotton counties.' "

"Below I am quoting from a letter dated September the 23rd, addressed to Mr. Grady Bell, Secretary of the Chamber of Commerce, at Odessa, Texas, by Mr. Paul H. Appleby, Assistant to the Honorable Henry A. Wallace, Secretary of Agriculture:

"Supplying an emergency agricultural assistant, wholly paid from Federal funds to cotton growing counties that did not maintain county extension agents, was a temporary emergency expedient, due to the urgent need for immediate action. It was not intended as a permanent policy.

"We believe that the success of the entire agricultural adjustment program will to a great extent depend on having a well trained county agent permanently located in every county. Knowing his people, enjoying their confidence, and being familiar with local conditions, such an agent will best be able to assist them in connection with agricultural adjustment program, credit needs emergency relief work, and in other ways.

"We do, therefore, desire and expect that counties intending to participate in any of the adjustment programs will, if at all possible, cooperate with the State Extension Service and Department of Agriculture, in maintaining a full time cooperatively employed county agent."

Your letter calls for a discussion of Section 224 of the Constitution of 1901, which section places a limit on the debts which a county may incur. Section 224 provides:

"Sec. 224. No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein; provided, this limitation shall not affect any existing indebtedness in excess of such three and one-half per centum, which has already been created or authorized by existing law to be created; provided, that any county which has already incurred a debt exceeding three and one-half per centum of the assessed value of the property therein, shall be authorized to incur an indebtedness of one and a half per centum of the assessed value of such property in addition to the debt already existing. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created."

Assessed value, as used in Section 224 of the Constitution, means the value of the property assessed for taxation, that is the value on which the tax rate is imposed for the production of taxes.

Smith vs. Austin, 200 Ala. 427.

The indebtedness spoken of or referred to in Section 24 is the obligation to pay more money than can be supplied by current funds, or by current revenues provided by lawful taxation for the fiscal year.

Brown, Treasurer vs. Gay-Padgett Hardware Company, 188 Ala. 423.

At the time the Gay-Padgett Hardware opinion was written, there was no general law expressly authorizing counties to borrow money, and it had been unanimously held that without such express authority, a county could not borrow money for any purpose.

Gunter vs. Hackworth, 182 Ala. 205; Mayor of Wetumpka vs. Wetumpka Wharf Co., 63 Ala. 611.

In the Gay-Padgett Hardware Company case the Court said:

"We think it is clear, also, that such a county cannot borrow money even to provide funds for current and necessary municipal expenses."

Undoubtedly the part of the opinion just quoted, means that under the law as it existed at the time of the rendering of the opinion a county had no authority to borrow money for any purpose. It cannot be questioned that the Legislature has authority to delegate such a power to a county and that the power when delegated could be used to the extent authorized by the Legislature, and so long as this does not contravene constitutional limits. By an Act approved March 1, 1915, county governing bodies were authorized to make certain loans in anticipation of the taxes for the current year during which the loan was made.—Acts 1915, page 105.

Our Supreme Court has held that the anticipation of taxes of a current year by a county is not such an indebtedness as is prohibited by Section 224 of the Constitution. Counties that have reached their constitutional debt limit under Section 224 of the Constitution, may borrow money in anticipation of the taxes of the current year during which said loan is made. This authority was expressly given by the Legislature in the Act approved March 1, 1915.—Troy National Bank vs. Russell County et al, 291 Fed. 185.

You are desirous of knowing just what authority county governing bodies have to appropriate or set aside money for the payment of salaries of farm and home demonstration agents.

It is the settled law of this State that when a county has reached its constitutional debt limit under Section 224 of the Constitution of Alabama of 1901, it cannot contract any further debt. It is then reduced to a cash basis and a policy of "pay as you go." In order, however, that a county may function as an arm of government, the law says that while the county must live within its revenue for the current year, yet it may appropriate its tax revenues in anticipation. For this purpose the tax revenue is by a fiction considered as in esse or on hand. In arriving at what is meant by living within the income of the current fiscal year, recourse should be had first to all those debts or obligations made obligatory upon a county, of an involuntary class, such as heating the jail, and those claims which are made preferred claims by Sec-

tion 231 of the Code of Alabama of 1923. After all claims that are made obligatory upon a county are computed, or subtracted, the balance, if any, is the amount that the county commissioners are invested with discretion as to what purposes they will "appropriate" or set apart its revenues for during the current fiscal year.

If a county has reached its constitutional debt limit, this does not necessarily mean that such a county cannot appropriate or set aside funds for the purpose of paying for a county health unit, farm demonstration agent, home demonstration agent or child welfare agent, by proper resolution of the governing body of such a county. However, if such a county has reached its constitutional debt limit and has also borrowed the limit, in anticipation of the collection of tax revenues for the current fiscal year, then such a county is without authority in law to make appropriation for a county health unit, farm demonstration agent, home demonstration agent or child welfare agent.

The fiscal year in Alabama runs from October 1st until October 1st. Only about half of the first month of the fiscal year has passed. In those counties where the constitutional debt limits has been reached, it may be that such counties have not at this early date in the fiscal year, borrowed the limit in anticipation of the collection of tax revenues for the present fiscal year. If a county has not anticipated the current revenue it may borrow in anticipation of the current revenue and after discharging its involuntary obligations such county may use the balance for any lawful purpose.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 25, 1933.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission,
CAPITOL.

"Fruit Stands" defined.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you ask a review of my opinion of March 14, 1933, relating to the license on fruit stands.

The license provided by Schedule 76 of the 1929 Revenue Code is as follows:

"For each fruit stand in cities or towns of over ten thousand inhabitants, ten dollars; in other places, five dollars."

The Schedule is simple, terse and direct. No reason for the apparent great difficulty in enforcing this Schedule appears, unless it be the meaning of the word "fruit stand."

A stand is defined by Webster as follows:

"A stall or booth for business; more broadly any station or location for business or considered as to its fitness for business opportunity such as a cigar stand or news stand."

Applying this I would say that the license applies to any stall, stand or station where fruit is displayed, offered for sale or sold. Likewise it applies to any location or station generally suitable for the business, and where fruit is displayed, offered for sale or sold.

If a fruit stand is operated it is immaterial whether the same be within or on the front or other place outside the store.

The opinion of March 14, 1933, is hereby withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1933.

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

(1) Securities registered under 1927 General Revenue Act and prior to April 20, 1933, are exempt from ad valorem taxes for all years up to and including the tax assessing year October 1, 1932.

(2) Securities registered after April 20, 1933, secure exemptions only for year registered.

(3) All securities must be registered annually subsequent to April 20, 1933, in order to obtain exemption from ad valorem taxation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 15th in which you state:

"Under the provisions of an Act of Legislature approved July 22, 1927, and particularly Section 45 of said Act, 'Any owner of any securities enumerated in the preceding section may, as of the first day of October 1927, and thereafter as to securities subsequently acquired from time to time as of the first day of October next, following the date of acquisition, record the fact of his ownership thereof in the office of the State Tax Commission of Alabama by filing for record in said office a list of these securities held by such owner....' Among other things said Act also provides an exemption from ad valorem taxes for those securities which were registered under the provisions of said Act. In interpreting that part of the Act relating to the exemption of securities, the Attorney General, in an opinion rendered August 21, 1929 (Biennial Report of Attorney General, 1928-1930, page 587), held that:

"It thus appears that when a list of securities or a security, has once been recorded as provided by said Act, each security on the list is ever thereafter free from all charges for taxes present, past and future, so long as said Act shall remain the law.'"

"By an Act of the Legislature of Alabama approved April 20, 1933 (Acts 1933, page 203) Section 51 of the above-mentioned Act of 1927 was amended so that Sub-division D of Section 51 now reads as follows:

"There shall be no ad valorem tax assessed or collected upon any security included in any list on account of which the tax prescribed by this Act shall have been paid, either State, county, or municipal, for the year in which listed, provided however, that if said securities are not listed for any tax year and the privilege or license tax paid as herein provided, the same shall be considered as escape personal property and subject to the ad valorem taxes, laws and penalties relating to personal property which has escaped taxation, and the Tax Assessor or Deputy Tax Assessor of the county wherein the owner of such securities resides, shall assess the same as escape personal property is assessed, and notify the State Tax Commission that such assessment has been made and for what years the same has been made, and the State Tax Commission shall not thereafter accept the same for listing for the years for which it has been so assessed for taxation.'

"While it is very clear that Sub-division D as quoted above limits the exemption from ad valorem taxes to the year in which the securities are registered, it is also clear that there has been no amendment to Section 45 of the 1927 Act which was first quoted in this inquiry. Section 45 seems to anticipate the recording of ownership on October 1, 1927 of all securities which were owned at that time, and then provides for the recording of the ownership of securities subsequently acquired. The

question now arises as to whether or not those securities, the ownership of which was recorded under the provisions of the 1927 Act and before it was amended in 1933, would require a new registration and an annual registration to obtain the benefit of the exemption from ad valorem taxes.

"Section 45 above referred to being a part of the Act which was interpreted by the Attorney General to provide for a one-time registration of ownership has not been changed by legislative act, but Sub-division D of Section 51 having been changed to make a clear provision for the limitation of exemption to the one year in which the ownership of securities is recorded, we find it necessary to ask your opinion as to whether or not the amending of Section 51 by the 1933 Legislature changed the entire import of the Act providing for the registration of securities so as to require the annual registration of all securities whether or not the ownership of such securities had previously been recorded or not. We take it that the Act as amended is the last expression of the Legislature and as that statute provides for an annual registration, it occurs to us that such application applies to those securities which have previously been registered, as well as those securities which have been acquired subsequent to the previous registration and which will be acquired from time to time.

"We will thank you to give us your formal opinion in the matter."

In reply to your request, I beg to advise that it is provided in subsection (2) of Section 51 of the amended Act of 1933 as follows: "* * * provided a list of all securities may be filed and recorded annually and the tax paid as above provided each year." Subsection (d) provides: "There shall be no ad valorem tax assessed or collected upon any security included in any list on account of which the tax prescribed by this Act shall have been paid, either State, county or municipal, **for the year in which listed**, provided, however, that if said securities are not listed for any tax year and the privilege or license tax paid as herein provided, the same shall be considered as escape personal property and subject to the ad valorem taxes. * * * * *"

Construing the Act of 1927 along with the amendment of 1933, it is my opinion that those securities which were registered in accordance with the provisions of Section 44 to 52, inclusive of the 1927 Revenue Act approved July 22, 1927, and before said Act was amended by the Act approved April 20, 1933, were exempted from the ad valorem taxation for all tax years up to and including the tax assessing year which commenced on October 1, 1932. Those securities which have been registered since April 20, 1933, the date on which said amendment was approved, are exempt from ad valorem taxation only for the tax assessing year in which such securities are registered.

It is further my opinion that all securities as defined in Section 44 of the 1927 Act including those which were registered prior to April 20, 1933, must be registered (or ownership thereof be recorded) as required by said

Acts as amended by the Act approved April 20, 1933, each and every year in order to obtain exemption from assessment for ad valorem taxes.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1933.

Hon. O. L. Shelnutt,
Tax Collector, Chambers County,
LaFayette, Alabama.

(1) Where Bank is insolvent and there are no funds in the hands of the Receiver belonging to the shareholders, taxes assessed against the shares must be collected from the shareholders.

(2) Levy and sale for collection of taxes is the duty of the Tax Collector.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"When I made my delinquent tax report to the Probate Court stating that I was unable to collect certain taxes for year 1932 without a sale of the real estate, I included in this report the taxes due by The Bank of LaFayette. Since that time the Bank of LaFayette has been declared insolvent by the State Banking Department and is now under liquidation. Under these circumstances I would like to know—

"(1) Since my report has already been made to the Probate Court is it the duty of the Probate Court to proceed in the regular way by issuing summons to the Bank of LaFayette to appear and show cause why the real estate as belonging to the Bank should not be sold for the payment of the taxes, or does the declaration in insolvency automatically place the matter back in my hands?

"(2) If the Probate Court has no jurisdiction over this matter then it is my understanding that I must proceed against each individual stockholder. Under such circumstances the stockholders have two assessments, one assessment in their name, which is their regular assessment and the other assessment in the name of The Bank of LaFayette. Suppose Mr. "A", a stockholder has regular assessment say real estate \$50.00 and personal property \$20.00; he pays this assessment of \$70.00 and I give his official receipt stamped paid. Later the taxes due on the stock are

not paid in regular way by the Bank and the Tax Collector has to call on the stockholder, Mr. "A", for his prorata share of the tax, does the State and County have a lien on the same property as covered by the above \$70.00 assessment for the payment of taxes due by Mr. "A" on the Bank stock? Would the State and County have lien on any property owned by Mr. "A" at any time during period from October 1, 1931 to September 30, 1932?

"(3) When I make an effort to collect the taxes, by levy and sale, some of the taxpayers are going to try to enjoin me and try to prevent me from making the sale. Can this be done, or is it the duty of the stockholder to pay the taxes and later, if the Court should decree a refund, file an application with State and County for the refund?

"(4) In making a levy and sale of personal property can this be done by the Sheriff? It seems that the law requires the Tax Collectors to make the levy and sale in person, and if this is the law, it would be necessary for the Tax Collector to be away from his office, in a year like this, at least three months making levies and sales of such personal property."

Answering your various inquiries in order:

(1) In my opinion the declaration of insolvency places the matter back in your hands.

(2) This question is answered in detail by opinion to Hon. J. R. Kelly, Tax Collector, Conecuh County, a copy of which is here enclosed.

(3) While I cannot of course state what action the Court might take, it is my opinion that injunction is not the proper remedy.

City of Gadsden v. American National Bank, 144 So. 93.

(4) The collection of taxes is the duty of the Tax Collector.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 30, 1933.

Hon. W. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.

Supplement to Opinion of February 13, 1933, relative to the redemption of real estate sold for taxes, prior to September 13, 1932, and bought in by the State.

Opinion by the Attorney General.

My dear Judge Brandon:

I have considered the opinion of this office directed to you of date February 13, 1933. I think the opinion as rendered is substantially correct, but some parts of it are not in accord with my present analysis of the effect of the Act in light of Section 100 of the Constitution. I therefore want to amend the holding of this office of February 13, 1933, by holding that where one redeems from the State from a tax sale occurring prior to September 13, 1932, the person redeeming must pay the rate of interest prescribed by Section 3110 of the Code of Alabama, 1923, viz: fifteen per cent per annum on all taxes which have accrued prior to September 15, 1932, and which would be payable on October 1, 1932.

However, where the sale has taken place subsequent to September 1, 1932, of course the redemption is controlled by the Act approved September 15, 1932, (General Acts 1932, p. 17). I do not think Section 3110 of the Code providing the rate of interest to be paid is applicable to taxes which accrued subsequent to October 1, 1932, regardless of when the property had theretofore been sold for taxes if bought in by the State.

I do not consider the provision of the Act of September 15, 1932 (General Acts 1932, p. 17), to, in any sense of the word, postponed a liability owing to the State thereby contravening Section 100 of the Constitution, wherein said Act does not provide that the current year taxes must be paid upon the redemption from the State. I consider this change in the law not to be offensively retroactive, but to be a mere change in remedy which has been approved in several cases.—*State vs. Aencia Nat. Life Ins. Co.*, 814 Ala. 628-631.

To repeat: Where property was sold for taxes and bought in by the State prior to September 15, 1932, the person redeeming must pay the rate of interest prescribed by Section 3110 of the Code of 1923, on all taxes accrued to October 1, 1932, but the taxes accrued thereafter bear interest at the rate of eight per cent per annum as prescribed in the Act approved September 15, 1932. By virtue of this same Act of September 15, 1932, the person redeeming from the State, no matter when the tax sale occurred, need not pay taxes for the current tax year which are not due at the time of re-

demption, since the effect of the Act of September 15, 1932, is to relieve the person redeeming from that payment.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 8, 1933.

Mr. John C. Curry,
State Tax Commission,
CAPITOL.

Where timber has been sold separate and apart from the land, it is subject to assessment as personal property and may be sold as such for delinquent taxes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 6, 1933, in which you enclose letter from Hon. H. A. Baggett, Tax Collector of Monroe County, in which it is stated:

"In my conversation with Mr. McKnight in regard to tax against a certain lot of timber in this County, he advised me to write to you for information.

"This standing timber has escaped tax for the past six years and was picked up by the assessor. Tax on the land has been paid, and a lease has been given on the timber which will expire in April.

"Now, the question is, shall I levy on this property as personal property or as real estate? Will the lease be cancelled if the property is sold for tax and bid in by an outside party? If the property is sold as real estate, can the persons owning this lease cut the timber before the lease expires, or can anyone cut the timber before the lease expires, or can anyone cut the timber before a tax deed has been rendered?"

In reply I advise that the facts are not entirely clear. However, if the timber had been sold separate and apart from the land is subject to assessment as personal property and if taxes were not paid it should be sold as personal property.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 8, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Constitutionality—Certain relief Acts.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 31, 1933 in which you request my opinion as to the following relief acts:

General Act 1931, page 551—Jennie M. Norris;

General Acts 1931, page 442—H. M. Smith;

General Acts 1931, page 638—W. E. Bray;

General Acts 1931, page 569—Anniston Land Company, a Corporation;

General Acts 1932, page 126—William H. Winston and Estella Winston;

General Acts 1932, page 176—National Life and Accident Ins. Co. Inc.;

General Acts 1932, page 195—A. P. Smith;

General Acts 1932, page 196—J. A. Kizer.

I am of the opinion that each of the relief acts in question is constitutional and valid under the authority of *State vs. Clements*, 220 Ala. 515.

However, in the cases of Mrs. Jennie M. Norris and the Anniston Land Company, a corporation, the amounts to be paid must be first adjudicated as provided in the respective acts in question before payment can be made.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 7, 1933.

Hon. Chas. S. McDowell,
County Attorney,
Eufaula, Barbour County, Alabama.

Counties may pledge revenue anticipated from gasoline tax.

Opinion by the Attorney General.

My dear Mr. McDowell:

I have your letter of October 3rd, in which you request an opinion for the Hon. Jake Oppenheimer, Member of the Board of Revenue of Barbour County. You inquire whether or not Boards of Revenue and Courts of County Commissioners of the various counties may pledge a certain portion of the gasoline tax levied by the State and by the Legislation directed to be distributed to the various counties of the State for the purpose of constructing, maintaining and repairing public roads and bridges of the various counties of the State.

This request, of course, contemplates a pledging of the counties' part of this tax beyond the year in which the money is borrowed on the tax.

I am well aware of the fact that this office has in numerous instances held that it was the purpose of the Legislature that this tax might not be anticipated, but should be used for the purpose of making cash payments for construction, repair and maintenance of public roads and bridges.

However, on June 20, 1933, the Supreme Court held in the case of Jefferson County v. Hard, 149 So. p. 81, that this was a tax levied by the State and money belonging to the State which the Legislature within its competency, and in the proper exercise of its discretion, has distributed to the various counties of this State. This opinion of the Supreme Court takes from this tax any character it may have had as a county tax.

In view of the above decision and in view of Section 224 of the Constitution of 1901, I am of the opinion that in no sense of the word would an obligation incurred in anticipation of this gasoline tax which is levied by the State, distributed to the Counties, be an increase of the public debt of the county within the inhibition of Section 224 of the Constitution of 1901. It is quite apparent the above referred to Section of the Consitution fixed the County debt limit by a consideration of a certain rate of taxation of the assessed value of property in the County.

Op. Justices, 145, So. 48.

In view of the decision of the Supreme Court which holds the Legislature had a right to distribute this State tax to the counties and in view of an Act approved August 27, 1927, as amended by an Act approved July 15,

1931, (General Acts 1931, p. 458), wherein it is provided that the gasoline tax levied and must be distributed to the counties and may be used exclusively for the maintenance, construction or repair of public roads or bridges in the various counties. I find that I am unable to say, from either the Act levying the tax, or the Act providing the method of distribution and the purpose for which it might be expended, that the Legislature restricted the Courts of County Commissioners or Boards of Revenue in the use of these funds, to an operation on a cash basis.

Of course, the Legislature having levied this tax, it has the power to take the same away regardless of any pledge made of said tax by the governing body of a county.

All opinions of this office, heretofore to the contrary, are hereby overruled.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

November 9, 1933.

Hon. John C. Curry, Chief Clerk,
Advalorem Tax Department,
State Tax Commission,
CAPITOL.

Taxability of tangible personal property on Government reservations.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"In your opinion directed to this Commission and dated May 20, 1931 (page 287, Biennial Report for 1930-32) you state as follows:

"The answer to your second question, therefore, is, that if the motor vehicle or other personal property is located on lands of the United States lying within the boundaries of the State of Alabama, which have been purchased or otherwise acquired by said United States for the purpose of erecting thereon any armory, arsenal, fort fortification, navy yard, custom house, light house, post office or public building of any kind whatsoever, it is not subjected to ad valorem taxes by the State of Alabama, under the laws as made at the present time."

"Would this ruling apply to the property of contractors, builders, or other person who do not reside upon such reservations, but who own property which has been brought into the State and placed upon such reservations for the purpose of erecting buildings, improvements, or conducting a business upon such reservation? Would this ruling apply if such owners of the property had a residence elsewhere in Alabama, but the property in question was not located at the residence, but on the other hand was used in business on such Government reservation? Would the ruling apply where the owners of such property had no residence in Alabama and had no business in Alabama other than on the Government reservation?"

In answer to your various questions I advise, as was stated in the opinion referred to:

"The general rule is that the situs of tangible personal property for purposes of taxation is the domicile of the owner."

Cooley on Taxation, Vol. 2, 4th Ed., Section 451.

This rule may be changed where such tangible personal property is permanently located elsewhere.

Applying these to your questions, I advise:

(1) If the contractor is a resident of Alabama, and the property is only temporarily used on the Government reservation, it is taxable at the residence of the owner.

(2) I do not understand your expression "used in business on such Government reservation." If you mean that the property is permanently located on the reservation it would acquire a permanent situs apart from that of the owner and not be subject to the jurisdiction of the State.

(3) If the contractor resides without Alabama and the property is shipped direct from without the State to the Government reservation, and acquires no permanent situs in Alabama it is not subject to ad valorem taxation on the part of the State.

Referring again to question two, if the property was located at the residence of the owner on October 1st of any year and thereafter moved to the Government reservation, it would of course be subject to State taxes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 9, 1933.

Mrs. Dixie B. Shealy,
Tax Collector, Shelby County,
Columbiana, Alabama.

Personal property owned by State Bank not exempted by House
Bill 413, Stokes, Acts 1933, page 109.

Opinion by Assistant Attorney General Moore.

Dear Madam:

I have your letter of October 30, 1933, in which you state:

"On November 4, 1932, the Central State Bank at Calera, Ala., as-
sessed for 1933 taxes, the following:

"Real Estate	\$11,500
"Personal	1,000

"This personal property was under item 20 which covers typewriters,
adding machines, cash registers, iron safes, office and store furniture and
fixtures.

"The Bank claims that they are entitled to be given credit for the
above personal assessment under Section 6, Bill 111, House 413 Stokes,
page 109, Extra Session 1933, and I am writing to ask if this bill applies
to assessments made **before** the bill was passed. Would it be proper to
collect taxes on real estate only and take credit for personal property as-
sessed for 1933.

"Please let me hear from you at your very earliest convenience as
the Bank is ready to pay its 1933 taxes."

In reply I advise that as personal property owned by State Banks was
taxable prior to the passage of the Stoke Bill it is my opinion that it was not
thereby exempted.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 9, 1933.

Hon. J. C. Cunninghame,
Judge of Probate, Clarke County,
Grove Hill, Alabama.

Each embalmer liable for license under Schedule 36, Acts 1919, page 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 28th in which you state:

"Please advise me whether or not a man who lives in a town of about 1800 inhabitants, who does his own embalming with no help, is compelled to buy an embalming license. This man is a law abiding citizen, and does not want to break the law, but as his embalming is on a very small scale he does not want to buy a license if it is not necessary. Please give me your opinion in this matter at the earliest possible moment."

In reply I beg to advise that your question could have been answered by reference to Schedule 38, Acts 1919, page 282, which appear as Schedule 39 of the 1929 Revenue Compilation. This statute provides in part as follows: "For each embalmer, \$10.60." If your party is an embalmer and as there is no exception in the statute, it will necessarily apply to him.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 9, 1933.

Hon. W. M. Vaughn,
Judge of Probate, Dallas County,
Selma, Alabama.

Persons selling eye glasses in incorporated towns liable for license under Schedule 130; outside incorporated towns under Section 66 (1929 Code).

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Schedule 66 of the 1929 Revenue Code of Alabama is indexed Eye Glass Dealer, and provides a fee for one engaged in the business of selling eye glasses.

"Schedule 130 of the 1929 Revenue Code of Alabama is indexed Oculist, also Optometrist, and provides a fee for license for one engaged in the practice of said profession; however said Schedule also states selling and dispensing eye glasses. A dealer, who does not examine eyes, but has an assortment of eye glasses on the counter, and a customer calls and goes through the process of trying on the glasses until he finds a pair that pleases him, and makes the purchase. This dealer applies for State and County license.

"Should we sell him a dealers license under Schedule 66 or a license under Schedule 130."

If business is in an incorporated town the license should be issued under Section 130. If it is outside an incorporated town, it should be issued under Section 66.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 9, 1933.

Hon. Chas. C. Greer,
Superintendent of Insurance,
CAPITOL.

Securities deposited with Superintendent of Insurance discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The various insurance companies qualified to do business in this State now have on deposit with the Treasurer of this State approximately \$5,500,000 worth of securities, the larger portion of which consists of mortgages which have been placed on deposit by the domestic life insurance companies of this State. Section 8357 of the Code of 1923, relating to the deposits of domestic life insurance companies, reads as follows:

"Every life insurance company doing business in Alabama, chartered by the laws of this State, shall be required for better protection of the

policy holders, to keep at all time the sum of one hundred thousand dollars invested in bonds and securities worth not less than said sum, or in mortgages on real estate of the value of twice the indebtedness secured thereby; all to be certified as safe and worth said amount of one hundred thousand dollars by the Insurance Commissioner. It shall be the duty of the Insurance Commissioner, on the application of any such company, to pass upon the value of any other securities belonging to said company, certifying their value to the Treasurer, who shall receipt for and hold them, as provided in Section 49.'

"And Section 8367 of the Code of 1923 authorizing the Treasurer to take and hold deposits, reads as follows:

"The Treasurer of the State, in his official capacity, shall take and hold deposits made by any domestic insurance company, for the purpose of complying with the laws of any other State, to enable such company to do business in such state, and shall, also in like manner, take and hold any deposit made by a foreign insurance company under any law of the State. The Company making such deposit shall be entitled to the income thereof, and may, from time to time, with the consent of the Treasurer, when not forbidden by the law under which the deposit is made, change in whole or in part the securities which compose the deposit for other competent securities of equal value.

"Upon request of any domestic life insurance company, said Treasurer may return to such company the whole or any portion of the securities of such company, when he shall be satisfied that the securities so asked to be returned are subject to no liability, and not required to be longer held by any provision of law, or purpose of the original deposit. And he may return to the trustee, or other representative authorized for that purpose, of a foreign insurance company, any deposit made by such company, when it shall appear that such company has ceased to do business in the State, and is under no obligation to policy holders or other persons in the State, or in the United States, for whose benefit such deposit was made.'

"You will note in the first Section above designated that a particular company may deposit mortgages on real estate of the value of twice the indebtedness secured thereby, and according to the language of the second Section, these companies may from time to time, with the consent of the Treasurer, change in whole or in part the securities on deposit. As a result our domestic life insurance companies frequently send mortgages to us with the request that we deposit them with the Treasurer of this State, and in turn permit the company to withdraw other securities then on deposit.

The Problem

"Sometimes a particular company will send only the mortgage or mortgages and note or notes. There will be no opinion of title, no abstract and no appraisal, nor a certificate showing that the buildings, if any, are properly insured. At other times all necessary papers and documents will be sent to us, but the appraisal will show the value of the property in 1929, instead of the present value. The opinion of title shows that it is a good and merchantable title subject to current taxes street improvements and payment of the contractor for the erection of the building on the lot. At still other times we may receive mortgages, the title to one of which is in the A company, while the title to another is in the B company. The A company and the B company merge, forming the C company. The latter company, by the agreement of consolidation, acquired all of the assets of the former companies. But the latter company sends the mortgages to us for deposit with the titles of such properties in the status above designated.

"Please advise me officially what papers and documents and what evidence and information I should have to comply with the law when companies send mortgages here to be deposited in accordance with Sections 8357 and 8367."

While your letter in general and the matters therein discussed to a large extent are matters to be determined by the sound discretion of the Superintendent upon the facts in any particular case, I offer these suggestions to be used by you as a general guide in the premises.

(a) Bonds and Securities: Under Section 8356 of the Code of 1923, these must be worth not less than said sum, to-wit \$100,000.00. In my opinion this means present value of that amount not a potential value.

(b) Mortgages: The statute says the sum of \$100,000.00 shall be invested in "mortgages on real estate of the value of twice the indebtedness secured thereby." All to be certified as safe and worth said amount of one hundred thousand dollars by the Insurance Commissioner.

These two provisions may seem somewhat in conflict. It seems that a reasonable construction would be that at the time of the loan, the real estate security must be twice the value of the indebtedness secured thereby. This is a condition you will have to require.

However, the certificate which you are required to make is not to that fact but that the securities are safe and worth the amount of \$100,000.00 and as to this fact you will have to determine.

In determining this you can order a new appraisal, require additional security or make such other requirements as you deem necessary.

As a guide to you in passing on the securities offered, I offer these suggestions. They are offered as such and may be used by you or altered as the facts and your experience will justify.

Roughly, I should say evidence of the following things should be afforded you.

1. That the mortgage is a first mortgage on real estate.
2. A certificate of a responsible attorney that title is merchantable and that the mortgage is a first lien.
3. Reports of the appraisers showing date of appraisal and value. I can see no need for details of this except perhaps land and improvements should be separately valued, especially city property. If the appraisal is too remote or conditions have materially changed so that in the Superintendent's opinion the security is not sound and ample, a new appraisal may be ordered, or other securities substituted.
4. Evidence that buildings are insured should be furnished annually where improvements represent substantial part of security.
5. Proof of payment of taxes and street improvements should be furnished annually or upon request of the Superintendent of Insurance.
6. If contractor's liens are shown to be outstanding by the certificate it would appear that the mortgage is not a first lien. Evidence of their payment or subrogation to the mortgage must be required.
7. Code Section 7041 should amply protect you as to the question relative to consolidated corporations.

I hope these suggestions will be of aid to you.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 14, 1933.

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

Member of Jury Board of the various Counties—how paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 30th, 1933 in which you request my opinion as follows:

"Some of the members of the Jury Board of this County seem to think that their claims for services rendered as members of such board, should rank in preferment of payment in the same class with Grand and Petit Jurors and other officials of the Court, since their work is done entirely in connection with the Courts.

"I desire an opinion as follows:

"Are members of a Jury Board appointed in accordance with House Bill No. 70, Senate Bill No. 47, page 55 of General Acts of Alabama, Regular Session of 1931, under which bill compensation for such members is provided for, entitled to rank in preferment of claims against a county for services performed, the same as Grand Jurors or Petit Jurors and other members of the Court. In other words are their claims for services rendered as such members of the Jury Board, properly classified by the County Treasury as Rank No. 2 under Section 231 of the Code of 1923. Section 231 ranks members of the Jury Commission as No. 4 but the act above referred to does away with the Jury Commission.

"Is the Clerk of the Jury Board under the Act above described, entitled to the same rank of preferment of payment of his claims for services rendered, as are the members of the Jury Board."

The Act creating the Jury Board of the various counties of the State which was approved Feb. 20, 1931, (General Acts 1931, p. 55) in fixing the compensation of the members and clerks of said board by Section 5 of said Act does not make the claims of such officers for compensation a preferred claim. So we must look to Section 230, Code of Alabama, 1923, which has to do with preferred claims of the various counties against the County Treasury and under this Section I do not find where these claims are made preferred. I have examined the General Act since 1923 and this section does not seem to have been amended. So I conclude this Section as I now find it in the Code of 1923, is all the law there is upon this question. So we are of the opinion that such claims for compensation are not preferred claims of the first class. All other claims of an involuntary nature, which are not fixed by statute (such as this one) must be classed as preferred claims of a secondary class, which are not entitled to precedence and payment over the involuntary obligations of the county of the first class. Voluntary obligations are such as the County may or may not assume. They are not absolutely fixed, but are left with an amount of discretion lodged in the governing authorities of the counties.

We are, therefore, of the opinion that the claims you are inquiring about are involuntary claims and are therefore of the secondary class, which means they come next to the claims of the first class, which are involuntary under Section 230, supra, and must be paid out of any money in the General Fund of the County after those claims designated in Section 230, supra, are taken care of. This, of course, does not mean that the Treasurer must wait until he has actually paid all preferred claims before paying claims of a secondary class, but he must know that he has money enough in the general fund to take care of all fixed charges (first class) and enough to pay claims of the second class. When he has paid second class preferred claims until he had reduced the general fund to where it has only sufficient money to take care of first class claims, then he must stop payment of the second class preferred claims until when at a time he has sufficient funds as will amount to more than is required to take care of the fixed charges as set out in Section 230, supra. See **Brown, County Trea. vs. Gay-Padgett Hardware Co.**, 66 So. 161.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. E. W. Pettus, Chairman,
State Democratic Executive Committee,
Selma, Alabama.

Construction of Sections 12, 16A and 60 of the Primary Election Law of Alabama of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of October 5th, in which you ask certain questions about the Primary Election Law, found at page 73 of the General Acts of Alabama of 1931. You enclose a letter from Mr. Yung, which letter contains the question you desire answered. Mr. Yung's letter follows:

"I am considering running for the House of Representatives of the State as a member from Montgomery County. As you know, Montgomery County has four representatives and the question has arisen whether it is necessary to announce for a particular position under the primary election law, or whether it is possible to run generally against all other candidates.

"Section 16A of the primary election law (General Acts of Ala., Regular Session 1931, page 79) provides:

" 'Whenever and wherever two or more State Officers of the same are to be nominated in said primary each of said places to be filled shall be designated by number, and each candidate for such offices in the announcement of his candidacy shall designate the number of the office for which he is a candidate; that the same person shall not be a candidate or permitted to file his declaration for more than one of such places;. . . Each of said places to be filled shall be designated by number according to seniority in service of the existing incumbents. etc. . . . '

"The primary election law does not define State Officers so there is some doubt whether a legislative officer of the state comes within the above section.'

Since this office has received several similar inquiries, we shall discuss the sections of the Primary Law involved. There seems to be some doubt as to the meaning of Section 16A, found at the bottom of page 79 and at the top of page 80. Section 16A provides:

"Section 16A—Whenever and wherever two or more State Officers of the same name are to be nominated in said primary each of said places to be filled shall be designated by number, and each candidate for such offices in the announcement of his candidacy shall designate the number of the office for which he is a candidate; that the same person shall not be a candidate or permitted to file his declaration for more than one of such places; provided, no ballot shall be counted for any candidate except for the place and number for which he announced in his declaration filed with the legally constituted authorities to receive and file declarations of candidacy. Each of said places to be filled shall be designated by number according to seniority in service of the existing incumbents. If there is no such seniority, they shall be numbered in alphabetical order of the names of the incumbents. Provided, however, that this provision shall not apply to counties having a population of 300,000 or more according to the last or any subsequent Federal census except as to Judicial offices. And, provided further, that in Judicial circuits now or hereafter composed of only one county, and for which more than three and less than nine circuit judges are provided, said positions shall not be numbered."

First, I desire to say that a member of the Legislature is a State officer and is within the influence of Section 16A. In this connection I beg to refer you to Section 12 at the bottom of page 76 and at the top of page 77. Section 12 provides:

"Section 12. That any person desiring to submit his name to the voters in a primary election shall, not later than March 1st, next preceding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the Chairman of the County Executive Committee if he be a candidate for a County office, and with the Chairman of the State Executive Committee, if he be a candidate for any office except a County office, and in

like manner, and before March 1st, next preceding the holding of such primary election, pay any assessments that may be required to be paid by him."

You will note that in the case of State officers the person desiring to submit his name to the voters in a primary election, must file his declaration of candidacy with the Chairman of the State Executive Committee. In this connection I also beg to refer you to the following part of subdivision (f) of Section 60 at the bottom of page 96:

" 'County Officers' or 'County offices' do not include State Senators, Members of the Legislature, Circuit Judges, Circuit Solicitors, Congressmen, Members of the State Executive Committee of political parties, delegates to National political conventions, nor any officers whose compensation is paid by the State of Alabama or the United States."

I beg to refer you to the following part of subdivision (f) of Section 60 on page 96:

" and all other officers who do not receive their compensation from sources other than the county."

It will be seen that the Act is clear to the point that the Legislature intends that a candidate for either the State Senate or the House of Representatives is a candidate for a State office, and must qualify by filing his declaration with the Chairman of the State Executive Committee, as provided in Section 12. Indeed, in the absence of the primary law, our general laws are clear that Members of the Legislature are State officers.

I beg now to invite your attention to the wording of Section 16A. It appears that some confusion has arisen in construing this section. Allow me to say first that Section 16A does not intend to place a number on the candidate who runs for the office. **The numbering mentioned in Section 16A applies to the office or place "to be filled."** I beg to repeat that, in Section 16A, the Legislature has not intended to say that the candidate shall be designated by any number, but to the contrary, the Legislature has said that the office or place to be filled shall be numbered.

The intention of the Legislature, I think, can be best illustrated by the use of a concrete example: Let us assume that a certain county is entitled to two members of the House of Representatives. At the time the election is held, both of these places are filled by "existing incumbents." Section 16A provides among other things:

" . . . each of said places to be filled shall be designated by number according to seniority in service of the existing incumbents."

Let us suppose that the names of the two existing incumbents are "A" and "B". Let us assume further that Representative "A" in point of ser-

vice is senior to Representative "B". So the place or office filled by Representative "A" should be designated place number one. Any candidate who seeks place number one must make known that he seeks place number one. No matter how many candidates seek place number one, they must all make known that they seek place number one. The candidates themselves do not bear numbers, but the office to be filled or the place sought bears the number. Let us suppose that "the existing incumbent," "B" in point of service has seniority slightly less than incumbent "A". The office held by "existing incumbent" "B" would, by operation of this statute be numbered two or place number two.

I beg to invite your further attention to the following part of Section 16A:

" If there is no such seniority, they shall be numbered in alphabetical order of the names of the incumbents."

Thus, if Frank Jones and John Smith were the two incumbents of such offices and the said incumbents had the same seniority or service in office, (as indicated in the provision above set out) for the purpose of this Act, the office held by Frank Jones would be designated number one, and the office held by John Smith would be designated number two, this being in alphabetical order of the names of the incumbents.

In those counties that are entitled to four seats in the House of Representatives, let us designate the four places to be filled as "A", "B", "C" and "D". In this case, let us assume that the seat held by incumbent "A" is numbered one through operation of the seniority rule and that the seat held by incumbent "B" is numbered two through operation of the seniority rule, and let us assume further that the incumbents of offices "C" and "D" have exactly the same seniority in service, then this situation would furnish a field of operation for that part of Section 16A, quoted hereinabove, as follows:

"If there is no such seniority, they shall be numbered in alphabetical order of the names of the incumbents."

Here we would have two places designated by number, according to seniority in service of the existing incumbents, and two places designated in the alphabetical order of the **names** of the incumbents. So, places one and two would be so numbered because of seniority, and places three and four would be so numbered because of alphabetical order.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. Archie Leland,
License Inspector, Tuscaloosa Co.,
Tuscaloosa, Alabama.

1. Power of License Inspector in making arrest for violation of Revenue Laws.

2. Sheriff's right when forfeiture is taken and alias capias is issued.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 3, 1933, in which you request my opinion as follows:

"Under the law the license inspector and his deputies are given the same right to make an arrest and are allowed to the same fees as the sheriff.

"I desire to know if after an arrest is made, in a license case, and the defendant fails to appear in court, may the license inspector or his deputy execute a capias issued by the clerk of the court on the order of the Judge of the Court, and is said License Inspector entitled to the fee for executing same."

If in a criminal case the defendant fails to appear and forfeiture is taken against him and alias capias is issued by clerk, it would be his duty, under the law, to turn the same over to the sheriff of the county to be executed. See Section 3282, Code of Alabama, 1923, which is as follows:

3282. Writ of arrest executed by sheriff, etc.—A writ of arrest may be executed by the sheriff of any county in the state, or by his deputy; and such officers have the same powers and authority, in relation to arrest under a writ of arrest, as are by law conferred upon them in executing a warrant of arrest."

I am aware that Section 339, Revenue Laws of Alabama, 1929, says among other things:

" License inspectors shall have the same power to arrest persons violating the revenue laws of the State as is now vested in the sheriffs of the State, and shall receive the same fees for such service."

But you will note it says arresting persons violating the revenue laws of the State. This simply means that when the license inspector finds some one actually violating the revenue laws, or has cause to believe such laws are being violated, he may make the arrest, but when this is done his duties cease, so far as the arresting officer is concerned, and when the defendant fails to appear and forfeiture taken and alias capias is issued, as stated

above, it goes naturally into the hands of the sheriff for execution, and this being true, he would be entitled to the fee for executing this alias warrant or arrest.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

November 15, 1933.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of Section 39 of the Alabama Motor Carrier Acts of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of August 3rd has been received. Your letter follows:

"I am directed by the Commission to request that you render your official opinion, as Attorney General of Alabama, upon the questions presented by the following inquiry, viz:

"Section 39 of Act No. 159 (H. B. 113) set forth on pages 173 et seq., General Acts of Alabama, Extra Session 1932, reads as follows:

"Section 39: Except as provided in the preceding section, all excise mileage taxes, fees, and all other amounts collected under this Act shall be paid into the State Treasury within thirty days after their receipt and shall be kept separate and apart from all other funds by the State Treasurer, in a fund to be known as the 'Motor Carrier Fund' which fund shall be used as follows: (a) For the payment of all expenses incurred in the administration and enforcement of this Act; provided that the Commission shall not receive any additional compensation for the extra, new and additional duties imposed under the provisions of this Act. All laws and parts of laws, general, special or private, in conflict with the terms and provisions of this Act, be and the same are hereby repealed. (b) Ninety per cent of the taxes and fees collected under this Act shall be paid monthly into the State Highway Fund, to be used for the maintenance and construction of public highways in the State. (c) At the end of each fiscal year, the remaining ten per cent of the taxes and fees collected under this Act, after payment of the amounts provided for in subdivision (a) of this Section, shall also be credited to the State Highway Fund, to be used for the maintenance

and construction of public highways in the State. The expenses herein authorized to be paid out of said motor carrier fund shall be paid by the State Treasurer out of said fund on a warrant drawn as prescribed by law with respect to other warrants.

"In Subdivision (a) of said Section 39 of said Act, it is provided, among other things that the 'Motor Carrier Fund', as created by said Act, shall be used 'for the payment of all expenses incurred in the administration and enforcement of this Act.' Please advise this Commission, (1st) whether, under the provisions of said Act, the entirety of said 'Motor Carrier Fund', as created by said Act, or only a part, portion or percentage thereof, is available for use for the payment of all expenses incurred by this Commission in the administration and enforcement of said Act, (2nd) if it is your opinion that the entirety of said fund is available for said purposes, then advise whether, under the provisions of said Act, all expenses incurred by this Commission in the administration and enforcement of said Act are entitled to priority of payment from the moneys in said funds, and (3rd) if it is your opinion that the entirety of said fund is so available for said purposes, and that said expenses are entitled to priority of payment from said funds, then advise what period of time, whether calendar month, fiscal year, or otherwise, shall govern as the unit of time during which the moneys in said fund shall be held intact subject to the aforesaid priority of payment, and payment, of said expenses."

I have examined each and every section of the Motor Carrier Act of 1932, found at page 178 of the General Acts of Alabama, Extra Session, 1932. Section 39, especially is noted.

Among other things, Section 39 provides:

" * * * * * (a) For the payment of all expenses incurred in the administration and enforcement of this Act; * * * * *"

Section 39 of the said Act also contains the following provision:

"* * * * * (b) Ninety per cent of the taxes and fees collected under this Act shall be paid monthly into the State Highway Fund, to be used for the maintenance and construction of the public highways in the State. * * * * *"

Section 39 also contains the following provision:

"(c) At the end of each fiscal year, the remaining ten per cent of the taxes and fees collected under this Act, after payment of the amounts provided for in subdivision (a) of this section, shall also be credited to the State Highway Fund, * * * * *"

It is my judgement that the Act limits the amount which may be paid for the administration and enforcement of the Act to ten per cent. The three quoted sections mentioned hereinabove, clearly limit the amount to ten per cent. I am, therefore of the opinion that only ten per cent may be expended in the administration and enforcement of this Act.

This opinion takes the place of and revokes opinion of this office bearing date of September 22, 1933.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson Co.,
Birmingham, Alabama.

Mortgage made to the Home Owners' Loan Corporation to secure payment of loan made by it is not subject to filing tax provided by Section 4½ of Act No. 172, approved August 22, 1923, nor to any other tax of the State of Alabama.

Opinion by Assistant Attorney General Evans

Dear Sir:

Your letter of September 30th to hand. You write as follows:

We are advised by the Home Owners' Loan Corporation of this city that they are to file with this office, next week, quite a number of mortgages made to them. Inasmuch as this organization is working as an agent of the Federal Government, they have questioned whether or not the papers are taxable.

In reply, will say that, in my opinion, mortgages made to the Home Owners' Loan Corporation are not taxable under the provision of Section 4½ of Act No. 172, approved August 22, 1923. In the case of Federal Land Bank of New Orleans vs. Crosland, 67 L. Ed. 703, it is held that the levy of taxes provided by said Section 4½ is a general tax on mortgages, using the condition attached to the registration as a practical mode of collecting it. In that case the Supreme Court of the United States held that such tax could not be collected on the mortgages made to the Federal Land Bank because of the provision in the Act establishing the Federal Land Bank that mortgages due it could not be taxed; so in this matter about which you inquire.

In Section 4, subsection C of said Act, it is provided in speaking of the Home Owners' Loan Corporation:

The bonds issued by the corporation under this subsection shall be exempt both as to premium and interest from all taxation (except surtax, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any district, territory, dependency, or possession thereof, or by any State, County, municipality, or local taxing authority. The corporation, including its franchise, its capital, investments, and surplus and its loans and income shall likewise be exempt from such taxation except that any real property of the corporation shall be subject to taxation to the same extent according to its value as other real property is taxed.

You will see here that the loans and income of such corporation are exempt from all taxation, State and Federal. A tax on such mortgage would be a tax on its loans which could not be made according to said Act. In consideration of this provision in the Home Owners' Loan Act of 1933 and of the decision in the case of Federal Land Bank of New Orleans vs. Crosland, it is clear, in my opinion, that mortgages made to secure loans made by the Home Owners' Loan Corporation are not subject to taxation as provided in said Section 4½ of Act No. 172, approved August 22, 1923, nor to any other tax.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. Landon G. Smith,
Highway Director,
CAPITOL.

Debris, lumber or other timber left on or near a right of way within this State, so as to become dangerous to traffic or interfere with drainage, is a violation of criminal law, and such debris, lumber, or other timber may be removed at the direction of the Highway Director.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 10, 1933, in which you request my opinion as follows:

"We have had numerous cases where piling, logs, timber, etc., have been apparently abandoned on the right of way of our highways. Of-

ten it is dangerous, being placed near the driveway and in other instances left in the ditches and makes it difficult to maintain the road, shoulders, etc. Please advise if under such circumstances this Department would have authority to take possession of such materials and make disposition of same."

An individual or a corporation leaving such timber or debris on or near a public road in this State, would be guilty of a criminal offense and punished under Section 187 of an Act approved August 23, 1927 (General Acts 1927, p. 348) which is as follows:

"Section 187. RUBBISH THROWN ON HIGHWAY. Whoever puts, throws, dumps or leaves any tin can, old iron, brush, boxes, tools, machinery, vehicles, rubbish, brick, glass, glassware, glass bottles, glass jars, broken glass, broken glassware, or debris of any kind, or character whatsoever, in, upon or within the limits of any public highway, shall, on conviction, be fined in a sum not exceeding fifty dollars."

When rubbish of this character is left on the right of way so near as to become dangerous to traffic or to interfere with drainage of the road, I am of the opinion that you are authorized to remove the same.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. J. H. Hard,
State Comptroller,
CAPITOL.

Transcript to the Court of Appeals—How costs paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 8, 1933, in which you enclose a letter from Hon. J. Z. Mims, Clerk of the Circuit Court of Chilton County, addressed to Hon. Chas E. McCall, Assistant Examiner of Accounts, in which Mr. Mims desires to know whether or not he can be paid for making transcript for Court of Appeals in a criminal case appealed to said Court.

Mr. Mims presents to the Board of Administration a bill for a fee of \$6.25 as such cost in a certain case. I do not know that Mr. Mims figures are correct as I do not have the transcript he refers to before me, but I call your attention to Section 3667, Code of Alabama, 1923, and to that part of

the same that is as follows: "Record for Supreme Court (per hundred words) fifteen cents." I am aware this paragraph says Supreme Court, but I think it would apply as well to the cases appealed to the Court of Appeals.

See Biennial Report of Attorney General, 1930-32, pp. 283, 791, 877;
General Acts, 1931, p. 331.

Yours truly,
THOMAS E. KNIGHT,
Attorney General.

November 15, 1933.

Hon. W. H. Gillespie,
Sheriff, Chilton County,
Clanton, Alabama.

Sheriff's compensation and duties as to road service.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 30, 1933, in which you request my opinion as follows:

"1st. Is a Sheriff entitled to draw the \$90.00 per annum for discharging his duties relative to public roads as provided by Section 7287, or has this provision been superseded by any other enactment.

"2nd. What duties are required of a Sheriff in order to entitle him to receive such amount if it is due in any event."

Answering your first inquiry, the \$90.00 provided for road service under Section 7287, Code of Alabama, 1923, still remains and the Sheriff can collect this, provided he, in his sworn statement to the Commissioners Court, can show that such services have been rendered.

Answering your second inquiry, under our present system of working on the public roads the service of notice on the apportioners has been eliminated, and if the Sheriff now has any real duties to perform under the road service provision, I am not aware of them.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. I. R. Reddoch,
Judge of Probate,
Luverne, Alabama.

Residence rather than citizenship determines in what County license on motor vehicles owned by individuals should be taken out.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 13, 1933, in which you state:

"During the month of November, 1932, Mrs. Pascal Howard purchased, through my office a 1933 automobile tag. Later she was compelled by the License Inspector of Montgomery County to buy a tag in Montgomery County.

"Mr. and Mrs. Pascal Howard were born and reared in Crenshaw County. They have always retained their citizenship in this County. All of their people live in this County and they call this their home County.

"Please advise me if I acted within the law in selling this tag. The new season is approaching and I will likely have other applications of similar nature. I will therefore thank you to advise me as soon as possible."

In reply I beg to advise that Section 18, Acts 1927, page 139, provides in part as follows:

"That no license shall be issued to operate a motor vehicle on the public highways of this State nor shall any transfer be made by the Probate Judge as provided under this Act until the ad valorem tax on such vehicle shall have been paid in the County for the preceding year, as evidenced by a receipt of the Tax Collector, **where the owner of such vehicle resides**, if the vehicle is owned by an individual. . . ."

It therefore appears by the express terms of the statute that license must be taken out at the residence of the owner of the motor vehicle. Residence rather than citizenship, therefore, determines liability for motor vehicle license owned by individuals.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Dr. A. F. Harman,
Superintendent of Education,
CAPITOL.

Schools—hypothecating district school taxes collectable in future years.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 27, 1933, which reads as follows:

"I will thank you to advise me as to whether or not a County Board of Education is within its legal rights in negotiating a loan of \$2,000.00 hypothecating certain district school taxes collectable in future years for the retirement of such loan, the amount to be derived to be used for liquidation of certain district tax warrants issued in June, 1929, and maturing in June, 1934. The County Board of Education anticipates the negotiation of such a loan in order that it might secure from the state certain funds that have accrued to the credit of said County in the Rural Schoolhouse Building Fund."

"In view of certain provisions regulating the use of the Rural Schoolhouse Fund for the retirement of indebtedness, it will be necessary for the County Board of Education to certify that it has on hand an amount sufficient to match the State funds available. This \$2,000.00 will be used for such matched fund and together with the amount derived from the Rural Schoolhouse Fund will be applied on the retirement of said warrants maturing June 1, 1934.

"The original loan of which this \$2,000.00 is a part was made in accordance with certain provisions of Section 281 of the Alabama School Code of 1927."

In answer to your inquiry, I wish to state that I know of no authority of law whereby the plan therein stated may be consummated.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Mr. G. C. Brittain,
County Treasurer, Calhoun County,
Anniston, Alabama.

Authority of the Court of County Commissioners to make appropriations for the promotion of agriculture.

Opinion by Assistant Attorney General Moore

Dear Sir:

I have your letter in which you state:

"I am County Treasurer of Calhoun County, Alabama, and Secretary of the Board of Revenue of Calhoun County.

"As in many of the counties, the Reconstruction Finance Corporation has been supplying funds for relief work. The directors of this relief work have recommended and required that in each district a garden be prepared, planted and cultivated for the benefit of the unemployed and those seeking relief. Also, recently there has been quite a bit of canning of vegetables and fruits, from these gardens for the benefit of the unemployed and the needy.

"In planting and cultivating these gardens, it develops that the various parties in charge of this relief work found it necessary to use fertilizer in connection with the gardens and also had to hire some mules to do some plowing with. In addition to that, some canning outfits were purchased.

"These various directors now state that the funds of the Reconstruction Finance Corporation cannot be used for the payment of these items of fertilizer, rent of mules for plowing, canning equipment, etc., and have called on the County Board of Revenue to pay for the same.

"On behalf of myself as County Treasurer and on behalf of the Board of Revenue of Calhoun County, Alabama, I request you for an opinion as to whether or not such items of fertilizer, canning equipment and rent of mules could be properly allowed by the Board of Revenue and paid by me as County Treasurer. Please let me have an early reply as the parties are making demand upon me and upon the Board of Revenue for the payment of such items."

In reply I beg to advise that Section 6755 of the Code of Alabama as amended by Acts 1931, page 759, provides in part:

"Subsection 13. In all counties in this state where there are no poor-houses, organized or established in accordance with the laws of this state, courts of county commissioners, or boards of revenue in such coun-

ties, may make such appropriation in behalf of paupers or indigent persons entitled to relief from the county, not exceeding six dollars per calendar month for each person to meet the needs and expenses of such paupers or indigent persons, and it shall not be lawful for any court of county commissioners or board of revenue to let to the lowest bidder the maintenance of the poor.

"Subsection 18. Where the state or federal authorities have taken up the works of farm demonstration, or the organization of farm life clubs for the promotion of agriculture to appropriate for aiding in such work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary."

"Subsection 23. To set aside, appropriate and use county funds or revenues for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

The foregoing appears to be the only authority for the County Board of Revenue to make such purchases as described in your letter. If the purchases are made in pursuance to and under the authority of any one of the foregoing subsections, I am of the opinion that the same would be legal and you would be authorized to pay the same.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. L. H. Reynolds,
Chilton County,
Clanton, Alabama.

Compensation of members of the Commissioners Court. How provided when performing extraordinary services in connection with the roads and bridges of the county.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 5, 1933, in which you request my opinion as follows:

"Is the Commissioners Court required under the law to make a specific order regulating and designating that certain work in connection

with roads and bridges shall be performed before a member of the board so authorized to do such work, and must this order be made prior to the doing of such work?"

This office has consistently held that under Section 6771, Code of Alabama, 1923, that in order for a member of the Commissioners Court to receive compensation for services rendered by him in connection with the roads and bridges of his county outside of his regular per diem for attending sessions of the Commissioners Court there must first be an order of said court designating the work or services to be rendered. Section 6771 provides among other things:

"No allowance shall be made to any commissioner for per diem of mileage for inspecting roads, bridges, etc., except when acting under authority of an order of the commissioners' court, previously made."

Biennial Report Attorney General, 1928-30,p. 851.

However, I find that this section has been amended by an Act approved July 31, 1931 (General Acts 1931, p. 805) and now reads in part as follows:

"Provided however that in cases of emergency and when necessity demands it shall be permissible for any member of the commissioners court or board of revenue to make inspections of roads and bridges and that such member shall be allowed his per diem and mileage on proof being made by such member to the court of County commissioners or boards of reveaue that such emergency existed, and by filing a certified, itemized, statement of the amount of time spent and mileage traveled in making such inspection. Provided this shall not apply to counties in which the compensation of the members of the governing body of the county is fixed by local law. . . ."

I do not find where the compensation of the members of the Commissioners Court of Chilton County is fixed by any local law, therefore, the amendment applies to your county and must be strictly adhered to before the claim of this character can be allowed. Therefore, if a member of your Commisisoners Court is required to do any work, or perform any services in connection with the roads or bridges of your county, there must be a previous order of said court specifically setting out the work to be done, its location etc., unless said services come under the exception provided for and pointed out above.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—conveyance of lands under Secs. 387, 388 and 389, School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 27, 1933 which reads as follows:

"In order that I may be able to advise county boards of education as to their authority and as to proper procedure in making application for loans for public school building projects to the Alabama Advisory Board of the Public Works Administration, I will thank you at your earliest convenience to answer the following question: Can lands situated in a county as set forth in Article XIX, Sections 387, 388 and 389 of the Alabama School Code of 1927 be conveyed to the United States Government in consideration of the grants and loans authorized by the Government to be made by the Public Works Administration?"

I am of the opinion that your inquiry should be answered in the affirmative. Section 387, School Code of 1927, provides as follows:

"387. Sale of Certain School Lands.—Whenever the County Board of Education of any County shall certify to the State Superintendent of Education that it is to the benefit of the public school interests of such County or a public school district thereof for any lands situated in such County or district which have been conveyed to the State of Alabama for school purposes under the provisions of the law relating to securing State aid in the erection or repairing of rural schoolhouses or the provisions of the law relating to County High Schools to be sold particularly describing the same, the Superintendent of Education, upon the receipt of such certificate with the approval of the Governor, shall sell and convey such land, either at public or private sale, and upon such consideration as may to him appear just and proper in the premises, shall execute a deed to the purchaser of the same in the name of the State of Alabama, and upon the delivery of such deed, the same shall divest all the right, title and interest of the State of Alabama in said land and invest it in such purchaser."

In my opinion there is ample authority in the above quoted section to authorize the conveyance in question, provided that the provisions of said section and Sections 388 and 389 are strictly followed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 15, 1933.

Hon. T. R. Martin,
Judge of Probate, Bullock County,
Union Springs, Alabama.

County can supply gasoline only for motor vehicles owned and used by the County for County purposes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 19th in which you inquire:

"For several months Bullock County through the Commissioners Court, has been purchasing, tax free, gasoline for use in constructing and maintaining roads in the County.

"Would it, in your opinion, be legal for a portion of this gasoline to be set aside for the use of the Health Unit and other departments of the County, provided that such part of the gasoline so used be paid for out of the General Fund of the County?"

In response to my request for more specific information you advise under date of October 7th as follows:

"Replying to yours of October 6th with reference to use of gasoline by the departments of Bullock County, wish to state that the departments for which this gasoline is proposed to be used, if legal, are as follows: County Health Unit, Supt. of Education, Welfare Dept., County Farm Agent, Home Demonstration Agent, and Sheriff.

"We would like to have your opinion whether or not it will be legal for us to use such portion of the gasoline purchased by the County, tax free, for these departments, provided such part of the gasoline used by these departments be paid for out of the General Fund of the County."

In reply I beg to advise that in my opinion the gasoline purchased by you can be used only in County owned motor vehicles and strictly for County purposes. If the motor vehicles used by the County Health Unit, Superintendent of Education, Welfare Department, County Farm Agent, Home Demonstration Agent, and Sheriff are not County owned vehicles the County cannot supply the gasoline.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 18, 1933.

Hon. W. A. Clardy,
Judge of Probate, Randolph County,
Wedowee, Alabama.

Under subsection 8 of Section 5498, the Court of County Commissioners authorized to employ special counsel in tax appeal cases and Probate Judge upon order of the Commissioners Court should issue warrant in payment of compensation for such services.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 29, 1933, in which you state:

"Does the Probate Judge have the right to sign and deliver a warrant in the following instances:

"Where an attorney appears in a case styled, State of Alabama vs. Escape taxpayer, when there are no minutes where the Board of County Commissioners ever employed such attorney?

"Further, where Section 194 of the 1929 Revenue Laws of Alabama specifies that such attorney shall be appointed by the State Tax Commission with the approval of the Governor? And where there is nothing shown that the same was done?

"Where said attorney presents a statement to the Court of County Commissioners, and they approve the same (though no minutes or contract of employment is shown in said records) and said Commissioners state that they did on the outside talk with said attorney?

"Does the County have the right to employ counsel in such cases when the same is brought in the name of the State of Alabama?

"What effect if any would there be to such an occasion if a County taxpayer files a protest against such payment?

"Would the Probate Judge be liable on his bond if he made such payment?"

In reply I beg to advise that subsection 8 of Section 5498 provides as follows:

"8. All county solicitors, all circuit solicitors, and any solicitor of any court of record, shall give every county official opinions in writing on all matters connected with their respective offices except in suits against official's bonds. But courts of county commissioners or boards

of revenue may retain or employ attorneys, when it is deemed advisable or necessary, and the agreed compensation to them may be paid as are claims to grand and petit jurors."

In my judgment this authorizes the Court of County Commissioners to employ special counsel in tax cases.

The question of the style of the case being the State vs. the taxpayer seems to me immaterial as it is a matter which vitally affects the interest of the County, and I think the Commissioners would be fully authorized in making such employment. Section 194 of the 1929 Revenue Laws has nothing to do with the powers of the County Commissioners.

In answer to your other question, if the employment was bona fide made by the County Commissioners and the claim is presented to the Commissioners, allowed and approved by them, you should issue warrant for the amount of such allowance.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 18, 1933.

Hon. J. H. Hard,
State Comptroller,
CAPITOL.

Execution cannot issue for costs against a defendant that the State fails to pay under Section 3667, Code of Alabama, 1923, after he has been sentenced to hard labor and actually worked out all the costs, etc.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 29th in which you request my opinion on the following question:

1. Can execution issue for fine and costs in cases punishable by fine and costs after the defendant has been sentenced to hard labor on his failure to pay same or confess judgment therefor?

"2. Does the defendant begin paying the fine and costs by hard labor on the date of sentence?

"3. If execution for fine and costs can be issued after the defendant has been sentenced to hard labor to pay same and the Clerk issues an

execution ten days after date of sentence and the Sheriff collects the fine and costs, under such execution, sixty days from the date the execution is issued, how would the defendant get credit for the amount worked out during the seventy days he had served from date of sentence to date of collection of fine and costs under such execution?

"4. Is the defendant sentenced to hard labor to pay fine and costs as a third and last method of enforcing the payment of such fine and costs?

"5. Is it not mandatory that the defendant, on his failure to pay or confess judgment for fine and costs, be sentenced to hard labor to pay such fine and costs?

"6. If it is mandatory that the defendant, on his failure to pay or confess judgment for fine and costs, be sentenced to hard labor to pay same, would such sentence by the Court prevent the issuance of an execution?

"7. If an execution has been issued after the defendant was sentenced to hard labor to pay fine and costs, would such an execution be a void execution?

"8. If an execution has been issued after the defendant was sentenced to hard labor to pay fine and costs and such execution is a void execution, would the fees of the Clerk and the Sheriff, properly taxed against the defendant, for which he was sentenced and not paid under Section 3667 by the Convict Department be a proper charge against the fine and forfeiture fund of the County, upon the return of such execution 'No Property Found'?"

Answering your first inquiry, my answer is in the negative. Where a party is sentenced to hard labor to pay the fine and costs in a case, he is sentenced to pay all the costs and not simply the costs paid by the State under Section 3667, Code of Alabama, 1923, which section is made applicable to hard labor cases by an Act approved February 18, 1927 (Section 3 of said Act, General Acts 1927, p. 52)—See opinions of Attorney General, 1930-32, p. 961.

It is true the Court of Appeals in the case of Isbell National Bank vs. Burk, 147 So. 651, opinion by Judge Rice appears to adhere to a different doctrine, but it must be remembered that the above cited case was a civil proceeding in the nature of a mandamus, and it has been a long settled rule of our Courts that in civil proceedings the parties litigant can try their case or cases on any issue they may choose, and the court takes the transcript as presented together with the statement of facts and is not required to go outside of the issues presented to decide questions not insisted on or raised by the parties themselves. Where the statement of facts was agreed upon and the transcript shows that execution was issued and returned "No property found," no question as to the authority of the clerk to issue such execution in the first instance was raised, and this question not being

raised the Court decided the case was presented and properly held that execution having been issued and returned "No property found," for the balance of the costs not paid under Section 3667, supra, that it became a charge against the Fine and Forfeiture Fund of the County.

We are of the opinion that had the question of the right of the clerk to issue the execution in the first place since the defendant had been sentenced to hard labor to pay the costs and had actually worked out the costs, not only the costs paid by the State under Section 3667, supra, but all the costs, the court would have held that the clerk was without authority to issue execution for any costs the State had failed to pay, and was authorized to pay under Section 3667, supra, for the reason the defendant cannot and in all justice, should not be required to pay twice. When the defendant was sentenced to hard labor for the costs, as stated above, he was sentenced for all the costs at so much per day, and he was required to work out all the costs, not only the costs paid by the State but all the costs incidental to the prosecution. When he has done this can it be said that he can, when returning home from the penitentiary, be met at his door by a sheriff armed with an execution commanding that he pay again the costs he had already worked out. We think not and, therefore, adhere to our former ruling.

My answer to your second inquiry is in the affirmative.

In answering your third inquiry, I refer you to my answer to the first inquiry propounded by you.

My answer to your fourth inquiry is in the affirmative.

My answer to your fifth inquiry is in the affirmative.

My answer to your sixth inquiry is in the affirmative based on my answer to your first inquiry.

My answer to your seventh inquiry is in the affirmative.

For answer to your eighth inquiry, I refer you to what I have said in answering your first inquiry.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 18, 1933.

Hon. John Brandon,
State Auditor,
CAPITOL.

How costs in certain cases for feeding prisoners are paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 13, 1933, in which you request my opinion as follows:

"The law relative to feeding prisoners reads as follows:

"In cases where prisoners are confined in jail for contempt of court, or under attachment, or as a witness, or under peace proceedings, the bill must be paid by the prisoner, or if he is insolvent then to be paid by the State as in other cases.

"2. Where prisoners are confined under bastardy proceedings, the bill must be paid by the complainant or defendant, according to the judgment of the Court, or if the party adjudged to pay the cost is insolvent, then to be paid by the State.

"3. A prisoner is not regarded as insolvent without the return of 'no property' upon the execution issued against him in the particular case, and no execution shall be returned within thirty (30) days from the date it goes into the hands of the Sheriff.

"Has the State Comptroller any authority to pay for feeding a prisoner confined to jail on any of the above mentioned charges without a writ of execution shown 'no property found' attached to the food bill?

"Is it not the duty of the State Comptroller to return a feed bill for the writ of execution before paying same?"

It appears that the basis upon which your inquiry is predicated is quoted from certain printed directions appearing on the forms of feed bills and not from statutes governing the feeding of prisoners.

Under the law as set forth in Section 5638 of the Code of 1907 and as amended by an Act of the Legislature approved February 28, 1911, specific provision was made of a sheriff's fee of thirty cents (30c) per day, "for the feeding of prisoner confined in jail for contempt of Court, or under attachment or as a witness, or by virtue of any warrant to keep the peace, or on account of insanity, to be paid by the prisoner, or by the State, if he is insolvent."

It was also provided that the Sheriff should receive thirty cents (30c) per day "for feeding prisoner under Bastardy Proceedings, to be paid by complainant or the defendant, according to the judgment of the Court; or if the party adjudged to pay such costs in insolvent, then to be paid by the State.

Under the then provisions of law it was even provided—with regard to prisoner in jail under conviction or charge of any indictable offense, the

sheriff being allowed payment from the State Treasury for feeding such prisoners according to a scale, as to number fed each day—that on conviction the fees for feeding such prisoner should be taxed against him as a part of the costs to be collected under execution and such fees when collected to be paid to the clerk of the court from which the execution issued to be forwarded by such officer to the State Auditor.

It was in accord with these specific provisions of law that the directions as appearing on the forms of claims against the State filed by sheriffs for feeding prisoners were, in all probability, embodied therein many years ago and, through inadvertence, have been continued to be printed thereon to the present time.

By an Act of the Legislature approved September 30, 1920, a new law came into force and effect, governing the feeding of prisoners. Under this law, it was made the duty of the sheriff, except as otherwise provided by existing laws, "to feed the prisoners in the jail under his jurisdiction in accordance with the terms of the Act, and under its terms," the sheriff was not allowed to collect a fixed per capita daily allowance for feeding prisoners, as under previous laws, but only so much for feeding prisoners as had been actually expended with limitations fixed in accordance with a scale graded as to the number of prisoners fed each day. All laws and parts of laws by the terms of the Act and in conflict therewith were repealed with the exception of two certain sections of the Code one of which provides that:

"Any person committed to jail may furnish his own support under such precautions as may be adopted by the jailer to prevent escapes; and the jailer must furnish a support to those prisoners who do not provide it for themselves."

This section of the Code of 1907 is brought forward in the Code of 1923, as Section 4807, with a slight revision by substituting the word **sheriff** for the word **jailer**.

Under the provisions of this Act the State Auditor was required to examine the statement of the sheriff as evidenced by the feed bill and if the total expenditures for feeding State and County prisoners was found not to exceed the amount as provided in the Act for the feeding of such State and County prisoners, it was made the duty of the State Auditor to draw his warrant on the State Treasury for the amount so expended for the feeding of said prisoners.

Under Section 4826 of the Code of 1923, the sheriff is required to feed the prisoners in the jail under his jurisdiction in accordance with the terms of the Article of which said particular section forms a part. Section 4802 of the Code in prescribing who may be confined in jail, includes in subdivision one (1) of said section; "Persons committed for trial for public offenses," and in subdivision seven (7); "All other persons committed thereto by authority of law."

In the enactment of new laws governing the feeding of prisoners, the particular and specific provisions of law governing the feeding of prisoners in jail confined in contempt, attachment, bastardy, and peace proceedings, were not included, and are no longer a part of the law. "The fees for feeding a prisoner in jail are not a part of the costs in a criminal case, taxable against defendant for which he may be sentenced to hard labor for the county. It is only for costs proper in which jail fees do not enter, and the fine assessed, that the sureties become liable on a confession of judgment for fine and costs."—121 Ala. 328.

In an opinion of the Attorney General found in Opinions of Attorney General, 1922-24, p. 236, he advises: "The sheriff would not be authorized to collect the feed bill from the prisoner without an order and judgment of the Court that the fees should be paid by the witness (Code 1907, Section 7614, Code 1923, Section 5246), and the sheriff **could not return an execution**, 'no property found,' against such prisoner, if he was insolvent, for he could have no process in his hands." The Attorney General states further, "I am of the opinion that a witness placed in jail under the provision of the section referred to, should be fed by the sheriff and that the scale as provided in the Act of 1920, p. 28 should govern."

In advising as to authority of sheriff to claim pay from the State for feeding a prisoner from another State while confined in a jail in this State, the Attorney General states: "Section 4825-4837, both inclusive, Code of Alabama, 1923, govern the feeding of prisoners of other states and prisoners of Alabama. That is to say, **if a prisoner is legally committed to jail within the State of Alabama**, he should be fed by the State, without regard to 'from whence he cometh or whither he goeth.' The sole criterion as to whether or not the State shall pay for the feeding of a prisoner is that the prisoner has been legally incarcerated in jail and payment is not otherwise provided for."—Opinion of Attorney General, 1928-30, p. 233.

In an opinion of the Attorney General in answer to a question submitted as to whether the food furnished a defendant while he is incarcerated in jail may be legally assessed and charged against him as a part of the costs of his case, it is advised: "That such a charge would not be legal. Food for prisoners in the county jail is paid for by the State.—Section 4827, Code of Alabama, 1923. The Attorney General advises further that: "Section 4837, Code of Alabama, 1923, repeals all laws and parts of laws which are in conflict with Section 4827, supra."—Opinions Attorney General, 1928-30, p. 214.

In an opinion of the Attorney General rendered in answer to inquiry as to authority of sheriff to claim pay for feeding a prisoner in jail held under a writ of **ne exeat** (Section 6609) it is advised that the expense of feeding such prisoner is a charge against the State. While it is further advised by the Attorney General that in this particular case the cost of feeding is an item of cost the writ being issued in aid of civil litigation and if collected should be paid into the State Treasury, it is clear from the opinion that sheriff's pay for feeding the prisoner is not contingent or conditioned upon collection or

non-collection of cost in the case by execution or otherwise.—Opinions Attorney General 1928-30, p. 477.

Under an opinion of the Attorney General rendered September 17, 1932, it is advised in regard to the payment of feeding a prisoner sentenced to jail from a Justice Court of the County that: "The State is liable for the feeding of all prisoners committed to jail for violation of criminal statutes of the State whether it be from Mayor's Court, Justice Court or any other Court that has jurisdiction of crimes against the State."—Opinions of Attorney General, 1930-32, p. 1031.

Section 4801, Code of Alabama, 1923, in making provision as to who may be confined in jail, classifies in subdivision (1), "Persons committed for trial for public offenses," and in subdivision (7), "all other persons committed thereto by authority of law."

Section 4807 of the Code requires the sheriff to furnish support to those prisoners who do not provide for themselves. Section 4826 of the Code provides that the sheriff shall feed the prisoners in the jail under his jurisdiction. Section 4827 of the Code, as amended by an Act of the Legislature 1927, (See Acts 1927, p. 694), provides that food for prisoners in the jails, except as otherwise provided by existing laws, shall be paid for by the State—according to a prescribed scale.

There is no law otherwise providing for payment to the sheriff for feeding prisoners confined in jail under bastardy proceedings, contempt proceedings, attachment of witnesses or in proceedings to keep the peace.

You are therefore advised that there is no law authorizing the State Comptroller to require of a sheriff evidence of execution issued and returned "no property found," before paying for feeding prisoners confined in jail under any of the court proceedings above mentioned, nor has the State Comptroller authority to withhold or deduct from the Sheriff's monthly feed bill any per diem costs of feeding prisoners confined in jail in such cases on account of failure to accompany such feed bills with copies of executions showing insolvency of such prisoners.

The opinion rendered to you by this office on July 24th, 1933, pertaining to the same matter, is hereby overruled and withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 23, 1933.

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

Registration of voters—How made.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 5, 1933, in which you request my opinion as follows:

"(1) May the Board of Registrars under 'An Act No. 289 Senate Bill No. 179, page 274, Acts of 1927 serve for the full number of days allowed them, namely: Thirty days, during October and November, receiving pay for such services, then serve one day in addition to the thirty days, during the Christmas Holidays without pay.

"(2) If your answer to the above question is in the negative, may the Board of Registrars under such above described Section serve for twenty-nine days during October and November, presenting their claims against the State for such service, then serve another day during the Christmas Holidays and present the second claim for the last day served.

"(3) If question number one is answered in the affirmative, is it necessary that the Board of Registrars serve their last meeting which would be held in December, separately from their advertisement of their meeting in October and November."

The Act of the Legislature which amends certain sections of the Code of 1923, approved August 20, 1927 (General Acts 1927, p. 274) governs matters of registration of voters. It is true this Act was again amended by the Special Session of the Legislature of 1933, as to one minor point, however, this amendment does not affect the question presented here as the question you raise here has not been changed and remains as passed by the Legislature of 1927, *supra*. Section 375 of this Act, as amended, reads as follows:

"375. BOARD OF REGISTRARS TO HOLD FIXED MEETING AND GIVE NOTICE THEREOF. The board of registrars in each county shall visit each precinct at least once and oftener if necessary between October first and December thirty-first, 1927, and each two years thereafter, to make a complete registration of all persons entitled to register, and shall remain there at least one half a day. They shall give at least twenty days' notice of the time when, and the place in the precinct where they will attend to register applicants for registration, by bills posted at three or more public places in each election precinct, and by advertisement once a week for three successive weeks in a

newspaper, if there be one published in the county. Upon failure to give such notice or to attend any appointment made by them in any precinct, they shall, after like notice, fill new appointments therein. The time consumed by the board in completing such registration shall not exceed thirty working days in any county except that in counties having more than one hundred and fifty thousand population as shown by the last preceding census, the time shall not exceed seventy-five working days. The board of registration in each county shall meet at the courthouse on the fourth Monday in January, 1928, and each two years thereafter and shall remain in session ten working days for the registration of voters."

You will note the above quoted section says in part: "The board of registration in each county shall visit each precinct at least once and oftener if necessary between October 1st and December 31st, 1927, and each two years thereafter, to make a complete registration of all persons entitled to register." The law fixes the date at which prospective voters may register and gives no authority for an adjournment to some other and different date from those included in the limitation laid down by the Act. Therefore, if the board of registrars should serve their full time in October and November they could not, under the law, meet again the latter part of December, and serve an extra day even though this be without compensation. The fact that they would serve without compensation would make no difference as compensation is merely an incident and could not have anything to do with making the acts of the Board legal. However, I call your attention to Section 376, Code of Alabama, 1923, as amended by this Act, which section provides for the books of registration to be open for ten working days during the month of January, 1921, and each two years thereafter for the purpose of registering voters, except in counties having more than one hundred and fifty thousand population as shown by the last Federal census or any subsequent Federal census.

My answer to your second inquiry is in the affirmative. I see no reason why the Board of Registrars could not serve, if required, the twenty-nine days during October and November and then serve one day during December.

Answering your third inquiry, I think the advertisement should be made in one, and not one for the October and November and one for the one day in December, but special attention should be called in the advertisement to the fact that the Board would adjourn until the date fixed by them to finish the registration in December.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 23, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Case improperly dismissed for the reason it is improperly on the docket cannot carry costs against the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 19, 1933, in which you request my opinion as follows:

"A warrant was sworn out before a Justice of the Peace charging the defendant with violation of the Game and Fish Law, viz., (Seining) said warrant being returnable to the Justice of the Peace. When the case was called for trial before the Justice of the Peace, the defendant, under Section 3854, Code of 1923, demanded a trial by jury. Section 3854, Code of 1923, being a part of Article 4(Justice of the Peace and proceeding before them). The Justice of the Peace did not try the case, but placed the defendant under bond to appear at the next term of the Circuit Court and from term to term until discharged by law to answer the charge. The Justice of the Peace turned the affidavit and warrant, together with bond, over to the Clerk of the Circuit Court and from the file no indication is given as to why the papers were turned over to the Clerk. The Clerk, from said warrant, affidavit and bond, docketed a case against the defendant in Circuit Court and subpoenaed the witnesses, whose names appeared on the affidavit and warrant, to appear before the next jury term of the Circuit Court in behalf of the State. When the case was called for trial in the Circuit Court the defendant made a motion to dismiss the prosecution on grounds as follows: 1st. That the defendant before the Justice Court demanded a trial by Jury, as provided by law, and made bond for his appearance at the next term of the Circuit Court having jurisdiction of the offense. 2nd. That there are only two ways for the Circuit Court to acquire jurisdiction of offenses and that is by appeal from conviction before a court having jurisdiction of the offense and the other is by an indictment preferred by a grand jury and the defendant says that neither of said things happened, that is to say, that he never took an appeal from a conviction, for the Justice Court was precluded from hearing the evidence by the defendant's demand for a trial by jury, and the defendant says that he has never been indicted by a Grand Jury of.....County.' The Circuit Judge, acting upon said motion made the following order: 'This case, being improperly on the docket, is hereby dismissed and the Clerk is ordered to enter judgment of dismissal.'

"1. Was the case improperly on the docket.

"2. If improperly on the docket, would the Clerk be entitled to fees from the Fine and Forfeiture Fund under Section 4029, Code of 1923, As amended, Acts 1927, p. 45?

"3. If improperly on the docket, would the Sheriff be entitled to fees from the Fine and Forfeiture Fund under Section referred to in Question 2?"

In my opinion to you of July 17, 1933, relative to the same matter here under consideration, I misconstrued the facts as set out in your request. I considered the facts to be that this was an appeal direct from the Justice Court to the Circuit Court after conviction. In this I find that I was wrong, and am now basing my opinion on the state of facts furnished July 19, 1933, set out above.

Answering your first inquiry, it is my opinion that the answer to this should be in the affirmative. If, under Section 3854, Code of Alabama, 1923, a demand is made for a trial of the case by jury the case must go to the next sitting of the grand jury, and should not be placed on the trial docket for trial unless the grand jury finds a bill, and should the case be placed on the trial docket before this is done, then the case would be improperly on the docket. Of course, if the offense charged is one over which the Justice has jurisdiction, he must proceed to try the same and if the issue is found against the defendant he may, in this instance, appeal direct to the Circuit Court and the case be set down for trial without intervention of the grand jury. See Section 3854, Code of Alabama, 1923; 168 Ala. 107; 149 Ala. 63.

Answering your second and third inquiries, my answer is in the negative. If the case was improperly on the docket no costs could attach that could be chargeable against the Fine and Forfeiture Fund as it could not come under the provisions of Section 4039, Code of Alabama, as amended by an Act approved February 18, 1927 (General Acts 1927, p. 45) which section regulates the fine and forfeiture fund of the county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 15, 1933.

Hon. W. D. Partlow, Superintendent,
Alabama Insane Hospitals,
Tuscaloosa, Alabama.

Employees of The Alabama Insane Hospital exempt from road duty and street tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 27th, 1933, in which you request my opinion as follows:

"I am seeking your opinion on the following question: Are regular employees of the Alabama Insane Hospitals required, or can they be required to pay street tax in the city of Tuscaloosa?"

My answer to the above inquiry is in the negative. See Section 1459, Code of Alabama, 1923, which is as follows:

"1459. Officers and employes of hospital exempt from military, public road, and jury duty.—The superintendent, physicians, and all regular employes of either hospital shall be exempt from militia service, from liability to work the public roads, and from serving on juries."

The above quoted section says: ". . . . exempt from militia service, from liability to work the public roads, and from serving on juries." I think it was the legislative intent to exempt such employees from all road service and would include street tax as well as actual manual labor on the streets. In other words, the lawmakers intended not only to exempt from actual service but exempt from payment of what might be termed street or road tax.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 15, 1933.

Hon. B. M. Miller,
Governor of the State of Alabama,
CAPITOL.

Buildings—Construction of buildings for Department of Game and Fisheries.

Opinion by Assistant Attorney General Screws.

My dear Sir:

I have your letter of December 2, 1933 in which you state that under the law it is your duty to assign rooms in the Capitol to the Department of Game and Fisheries. You further state that on account of the crowded conditions of the Capitol it is difficult to assign proper and sufficient quarters to all departments.

In view of the above, you request my opinion as follows:

"1. Under the law, can funds of the Department of Game and Fisheries be legally allotted and expended in constructing a building on land owned by the State near the present Capitol Building for housing the Department of Game and Fisheries?

"2. Can the building be constructed, if approved and ordered by the Capitol Building Commission, and the funds of the Department of Game and Fisheries be used in paying for same without a Legislative Act authorizing it or without a special appropriation by the Legislature from the funds of the Department of Game and Fisheries?

"3. Should the Department of Game and Fisheries request that a sufficient amount of its funds be used to construct the building, can the State Comptroller, with the approval of the Governor, set aside the funds and use them for this purpose?"

I am of the opinion that your first and second inquiries should be answered in the negative. The expenditure of funds of the Department of Game and Fisheries is limited by an Act approved October 7, 1932 (General Acts 1932, page 84). Section 3 of said Act provides as follows:

3. The revenues derived from the sale of hunting, trapping and fishing licenses, fines from game and fish violations permits, confiscated illegal hunting and fishing instruments or devices and furs, and covered into the State Treasury in the Game and Fish Fund shall be used solely and exclusively for the payment of the salaries and expenses of the Commissioner of Game and Fisheries and employees of the State Department of Game and Fisheries and for the purchase and maintenance of the necessary equipment and supplies and other expenses, both in the office and in the field, and for the protection, propagation, purchase, distribution and planting of game, fur bearers and fish, and at no time shall said revenues or any part thereof be spent for any other purpose by any official, employee or agent of the State of Alabama."

"The purchase and maintenance of the necessary equipment and supplies and other expenses, both in the office and in the field," in my opinion, is not sufficiently broad to authorize the expenditure in question. Said expenditure is for the construction of a building, which cannot be made under the authority above cited. Such was not the Legislative intent. This is further evidenced by the fact that under the law the Department of Game and Fisheries shall be provided with suitable offices at the State Capitol

At this point, I might add that in my opinion a special Legislative act authorizing the construction of such a building would not be necessary if the funds were available which could be used for this purpose. The power to order the construction of such a building would be within the power of the State Building Commission.—Section 89, Code of Alabama 1923.

In view of the above answers to your first and second inquiries it follows that an answer to your third inquiry is unnecessary.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 15, 1933.

Hon. M. M. Gray, Chairman,
Walker County Commissioners,
Jasper, Alabama.

Bailiff in charge of a jury which has been ordered kept together by the Court not entitled to his lodging and board.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 9, 1933, in which you request my opinion as follows:

"Will you please advise the County Commission for Walker County if it would be authorized to pay for either the meals or lodgings of the court bailiff when he is in charge of a jury that the Judge of the Circuit Court has ordered kept together at meal time or at night. Section 8692 or 6717 of the 1923 Code."

I find no authority of law for the court to be charged with the duty of providing board and lodging for a constable or bailiff who is in charge of a jury that has been ordered kept together without separation. I call your attention to Section 8692, Code of Alabama, 1923, which is as follows:

"When kept together, jury provided with lodging and refreshments.—Whenever a jury is, by order of the court, kept together without separation during any night, or for an unusual length of time, it is the duty of the sheriff, with the approval of the court, at the expense of the county, to provide for the jurors suitable lodging and refreshments."

No mention is made of the bailiff in charge of special jury, but simply says that the members of the jury must be provided with lodging and refreshments.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 20, 1933

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Apportionment and distribution of public school fund under Section 241 to 252, School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 14, 1933, together with other data, from which the following inquiries are presented:

1. Have the provisions of Section 241, School Code of 1927 been complied with when the State Comptroller certifies to you an estimate of the amount of public school fund available for the year 1933-34 based on the assessments of the current year 1932-33 together with any unexpended balance to the credit of the said fund on September 30, 1933?

2. If the above certificate fulfills the requirements of Section 241, can you, as State Superintendent of Education, fulfill the requirements contained in Sections 242, 243, 244 and 245 of the School Code of 1927 and also Section 256 of the Constitution of 1901.

I am of the opinion that your first inquiry should be answered in the affirmative. Section 241, School Code of 1927 provides as follows:

"241. Auditor Certifies Amount of School Funds to State Superintendent.—On the first day of October of each year, or as soon thereafter as practicable, the State Auditor shall certify to the State Superintendent of Education the amount of money which has accrued and been placed by him to the credit of the public school fund for the fiscal year commencing on that day, stating specifically the amount derived from each source, and any unexpended balance there may be from the appropriation of the previous year to be carried forward, and the amount so certified shall be apportioned by the State Superintendent of Education, and be drawn and disbursed as provided by law."

Under the provisions of the Budget and Financial Control Act, the State Comptroller assumed most of the duties of the State Auditor. Under the provisions of this Act warrants cannot be issued unless there are available funds in the State Treasury. Also current revenues must be first used for current expenses. Therefore, of necessity, the certificate made by the State Comptroller for a fiscal year must be based on the estimated revenues of that fiscal year together with any balance carried forward from the preceding fiscal year.

I am of the opinion that your second inquiry should also be answered in the affirmative. The apportionment of the public school fund may be made on the estimate furnished by the State Comptroller. The actual distribution of the fund in question cannot be made nor warrants drawn until the money is actually in the State Treasury and placed to the credit of the said public school fund. However, the distribution may be made whenever an amount justifying said distribution is so credited.

By means of the apportionment made on the estimate of the State Comptroller, the various counties may be notified as to the approximate amount of money they may receive from the public school fund for any fiscal year. But the counties should also be notified that the money will not be available to them until same is in the State Treasury and warrants may be drawn thereon. This will give each county an opportunity to intelligently prepare its budget.

The manner of apportionment to the various counties is a matter of mathematical calculation to be made in accordance with the sections of the School Code in question.

The foregoing opinion is in accordance with the policy indicated in your letter of January 23, 1933, addressed to Hon. J. H. Hard, Jr., State Comptroller, which letter followed a conference between the Governor, the Comptroller, yourself and the Attorney General, at which time you requisitioned certain funds for current expenses.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 21, 1933.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Land sold for taxes.

Opinion by the Attorney General.

Dear Sir:

I have your request for opinion of even date herewith in which you inquire whether or not in a case where land has been sold for taxes prior to September 15, 1932, and bought in by the State the person whose land has been sold for the taxes must upon redemption, pay the amount of the taxes for each year since the date of the sale, to the Judge of Probate upon re-

demption where such landowner has, since the sale, regularly assessed and paid the taxes on said land as though it had not been sold.

This is to advise you that Section 3110 of the Code of Alabama, as amended by an Act approved Sept. 15, 1932, is so clear on this subject that one may read as he runs.

The Section as amended on this subject reads as follows:

"Provided, however, that where the person in whose name such land was assessed at the time of such sale, or some other person having ownership or interest therein, has regularly assessed such land for taxation for the assessment years subsequent to the year for the taxes of which the land was sold and the taxes due thereon have been fully paid, and on certificates of the Tax Assessor and Tax Collector to that effect, the person redeeming such land shall be relieved of paying to the Probate Judge the taxes of such subsequent years."

This provision applies alike to land sold for taxes prior to the adoption of the Act approved Sept. 15, 1932, and the land sold after the adoption of the Act approved Sept. 15, 1932.

I think the foregoing answers your inquiry.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 3, 1934.

Mr. W. A. Webb, Chairman,
Board of Registrars, Macon County,
Tuskegee, Alabama.

Notice of special registration—cannot register voters while engaged in purging list.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 11, 1933, in which you request my opinion as follows:

(1) "Section 375 of the 1923 Code of Alabama with reference to the Board of Registrars to hold fixed meeting and give notice thereof, states that the Board shall give notice of same for twenty days by bills

posted in three places in each precinct and for three consecutive weeks in a newspaper, if one is published in the County.

(2) "I shall also appreciate your advising, if it is permissible for the Board of Registrars to register those qualified to register while they are in session for the purpose of purging the list of registration."

Section 376, Code of Alabama, 1923, as amended by an Act approved October 4, 1932 (General Acts, Extra Session page 67) in providing for special registration does not provide for notice. But Section 375, Code of Alabama, 1923, as amended by an Act approved August 20, 1927 (General Acts 1927, page 274) does provide for notice of a regular registration, and construing the two sections together and endeavoring to determine the legislative intent I am of the opinion that for each special registration, notice should be given in the same manner and in the same way notice is given for general registration under the law.

Answering your second inquiry I do not think that it would be proper to register voters during the time you are purging the list. There is no authority of law for registering at that time.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1934.

Hon. John D. Chichester,
Commissioner, Alabama Real Estate Commission,
CAPITOL.

Construction of Section 4 of the laws of Alabama relating to the licensing of real estate salesmen and brokers.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of December 4th has been received. Your letter follows:

"From time to time, quite a number of our licensed salesmen who have heretofore been licensed as such in connection with a Corporation, or Partnership. (Section V of the Act) later on desire to be licensed as a Broker, either as an Individual, or with some other Corporation (or perhaps with the same Corporation) or with a new Partnership.

"In most of these cases, our Commission is entirely satisfied as to the competency and other qualifications set out in the Act (Section IV).

However, we have insisted on the prescribed examination set out also in Section IV.

"Applicants in these cases offer strenuous opposition to the examination on the grounds that it is unjust and unfair to put them to this trouble and extra expense, when the Commission has 'judicial knowledge' that this is unnecessary, except to carry out a technical interpretation of the Act

"A Resolution was therefore adopted by the Commission at a meeting in Montgomery on November 28th, 1933, asking that you kindly give us a ruling thereon. The Resolution is as follows:

" 'Where a Real Estate **Salesman** has been continuously licensed by this Commission as such Salesman for a period of five years, and desires to secure a Real Estate Broker's License, Broker's License may be issued to him upon proper application, accompanied by the original license fee applicable for same. The prescribed examination may be waived under the above conditions at the discretion of the Commission.' "

Section 4 of the laws of this State relating to licensing brokers and salesmen provides:

"Section 4. Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interest of the public, and only after satisfactory proof has been presented to the Board. An applicant for a real estate broker's license shall prove his competency to the Commission by the taking of an examination prescribed by the Board either in written form or by oral questionnaire; said examination relating to the principles of real estate practice and of business ethics pertaining thereto, and said applicant in addition to the original license fee shall pay an examination fee of Five Dollars, (\$5.00), which examination fee shall cover all examinations prior to the issuance of such original broker's license. The applicant must be a person whose application has not been rejected in this or any other State within two years prior to date of application."

It will be noted that much discretion is vested in the Commission in the matter of passing on the qualifications of brokers and salesmen. The Act appears to be clear on the point that before a broker is licensed, the broker must pass some sort of examination given by the Commission. The examination may be either oral or written. There is no requirement in the matter of where the examination shall be held. The examination may be held at any place within the State designated by the Commission. If the Commission is satisfied that the licensed salesmen are already qualified to be brokers, then I should think all the Commission need do is to submit such written or oral questions as it deems wise to these applicants. This should inconvenience the brokers very little. It appears that the Commission is without authority

to waive, entirely, all examinations. It appears also that the Commission is without discretion in the matter of the payment of a fee of \$5.00. Application must be accompanied by a fee of \$5.00. Under the provisions of the Act, the payment of a fee to act as a salesman would not cover the fee to act as a broker. It appears further that the applicant must not have been rejected within two years prior to the date of the application.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Dates fixed for hearing reasons why names should not be stricken from registration list cannot be extended beyond date fixed by statute.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 13, 1933, in which you request my opinion as follows:

"Please refer to Acts of the Legislature, 1927, and to Act approved August 20, 1927 and particularly to page 276, and to the Amendments in said Acts to Sections 392 and 393 of the Code, and advise, whether or not under Section 393, as amended in said Act, there is any authority of law for the Registrars to claim pay for any day's service more than one day's service, which is fixed in said Act as the second Monday in February of 1928, and each two years thereafter."

I call your attention to Section 393, Code of Alabama 1923, as amended by an act approved August 20, 1927 (General Acts 1927, page 274) which is as follows:

"Notice And Hearing When Names Are To Be Stricken From List. When the name of any elector is proposed to be stricken from the registration list, unless he or she is dead or is a non resident of the state, notice shall be issued to him or her by the board of registrars, citing him or her to appear before the Board on the second Monday in February, following, and show cause why his or her name should not be stricken from the list. Said notice shall be served by the sheriff at least five days before the second Monday in February. The Board of Registrars shall

in addition to the above notice give notice in some newspaper published in the county by one insertion."

You will note that the date fixed for this work is the second Monday in February, and the statute makes no provision for this work to be extended beyond this date. So it is my opinion that it cannot be extended, but must be completed on the date fixed by law, that is to say, the State can pay for only one day for this service and that must be the date fixed by statute.

This is overruling an opinion of this office rendered to Hon. John Petree, Judge of Probate of Franklin County, of date December 13, 1927.—**Biennial Report of Attorney General**, 1926-28, page 393. It appears that the writer of this opinion had Section 393, Code of Alabama, 1923, confused with Section 392.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 5, 1934.

Hon. B. L. Malone,
Judge of Probate, Morgan County,
Decatur, Alabama.

Courts of County Commissioners may deed property to Federal Government for building purposes and lease same from it under PWA ruling.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 13, 1933, in which you state the following facts:

"Morgan County has applied to the PWA for money to build a jail. Said county is beyond its constitutional debt limit caused by the depreciation of property. It is a ruling of the PWA that where a county has exceeded its constitutional debt limit they will loan money on a rental basis.

In view of the above, you request my opinion as to whether or not your courts of county commissioners, may deed county property to the United States Government for the jail in question to be built on and lease same paying rental enough to liquidate the debt in about thirty years.

I am of the opinion that your question should be answered in the affirmative. Section 1 of Section 6755, Code of Alabama, 1923, as amended by

Acts 1931, page 759, gives Courts of County Commisisoners authority to direct and control the property of a county as it may deem **expedient** according to law.

Said provision of law, in my opinion, is sufficiently broad to include the plan as above contemplated. This office has ruled that County Boards of Education may deed their property to the Federal Government under similar circumstances.—Opinion Attorney General, Book 16, page 184, (off. Ed.).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1934.

Hon. O. H. Downer,
Commissioner, District No. 2,
Aliceville, Pickens County, Ala.

Courts of County Commissioners, if they see fit, may divide State gas tax moneys equally among the Commissioners' districts in the county.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of recent date has been received. Your letter follows:

"About one month ago the Commissioners of this, Pickens County, divided all road funds that is our State gas tax and county gas tax, bridge fund, and road tax equally between the four districts.

"We want your opinion as to the legality of the division. Also can the several funds be put to the account of each district with the treasurer in one account, and be paid out by the treasurer on warrants drawn as usual by the order of the court signed by the Probate Judge, the only difference being each warrant will carry the district number. Mr. Park tells us that some time ago he wrote you about this and he hasn't heard and our pay rolls are being held up to a certain extent awaiting a decision from you and if possible will you rule and let us hear from you in the next few days."

The State gas tax is divided among the several counties. It is my judgment that the county has authority to divide this gas money in the man-

ner set out in your letter, viz., equally among the four Commissioners' districts in your county. It is my judgement that your County Court of Commissioners can do this without violating any law.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 30, 1933.

Hon. E. W. Pettus, President,
Dallas County Board of Education,
Selma, Alabama.

Schools—No authority for County Board of Education to pay for liability insurance on school busses.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 5, 1933 in which you request my opinion as to whether or not the premium on liability insurance on school busses owned by the County Board of Education can properly be paid out of the bonus fund.

I am of the opinion that your question should be answered in the negative.

Neither the County nor the County Board of Education can be sued in tort for negligence of driver of a school bus in transporting children to school under authority of Section 100, School Code of 1927. A suit against the County Board of Education would, in effect, be a suit against the State in this regard.—**Biennial Report of Attorney General**, 1926-28, page 730.

It naturally follows that since there can be no liability on the part of the County Board of Education for injury caused by the negligence of the driver of a school bus, the County Board of Education would not have authority to pay a premium for liability insurance for such negligence.

Although under Section 6755, Code of Alabama, 1923, as amended by Acts of 1931, page 759, Courts of County Commissioners and Boards of Revenue are authorized to carry liability insurance on their trucks, etc., said act does not extend to property owned by the County Board of Education.

I know of no authority whereby County Boards of Education may pay premiums for insurance in question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1934.

Hon. A. B. Byrd,
Hon. R. C. Balkcom,
Hon. W. H. Faust, Members,
Jury Board of Dale County,
Ozark, Alabama,

The effect of an Act of the Legislature approved April 19, 1933, is to fix a limit of \$50.00 per year as compensation to be drawn by members of the Jury Board; the year referred to in said Act commences on the date of the approval of the Act: April 19, 1933, and ends on April 19, 1934.

Opinion by Assistant Attorney General Carmichael.

Gentlemen:

Your inquiry of December 13th has been received. Your inquiry follows:

"As Jury Commissioners of Dale County, we wish to propound the following inquiry:

"During the calendar year 1933, we were the duly constituted Jury Board of Dale County, Alabama. On the 19th day of April 1933, the Legislature of Alabama passed an Act in which the laws governing the Jury Board at that time were changed. The change is found at page 136 of the General and Local Acts of Alabama of 1933. The change is as follows:

" 'In counties of 25,000 population, or less, \$50.00.'

"During the calendar year of 1933, the Jury Board of Dale County met and performed the duties of Jury Board members for a period of ten days. We assume that as regards this service, before the approval of the Act of April 19, 1933, our compensation would be governed by the old law. The Jury Board worked seven days after the approval of the Act of April 19, 1933. We assume that as regards the services performed after April 19, 1933, we would be governed by the Act, of April 19, 1933. If the compensation for the services performed before April 19, 1933, are added to the compensation for the services performed after April 19, 1933, the aggregate would exceed \$50.00. The question is whether or not, in view of the Act of April 19, 1933, we can draw our compensation for the seven days after April 19, 1933, even though the aggregate of the two exceeds \$50.00."

The Act of the Legislature of Alabama of April 19, 1933, changed the law governing the compensation to be drawn by members of Jury Boards.

Before the passage of the Act of April 19, 1933, members of Jury Boards drew \$5.00 per day and not exceeding \$100.00 in any one year. The Act approved April 19, 1933, provides that in a County of 25,000 population or less, a member of a Jury Board cannot receive as compensation for his services more than \$50.00 per year. The members of your Board performed the duties imposed upon them for a period of ten days prior to the passage of the Act of April 19, 1933, and performed seven days work subsequent to the passage of the Act of April 19, 1933. The total would amount to \$85.00, whereas the Act says that \$50.00 is the limit for any one year.

I am of the opinion that as regards the services performed prior to April 19, 1933, your Board must be governed by the old law and as regards services performed subsequent to April 19, 1933, your Board must be governed by the law of April 19, 1933.

I am also of the opinion that the Legislature intended the year referred to in the Act to commence on the date of the approval of the Act, viz: April 19, 1933. In my judgment the Legislature intended this: For and during the next twelve months after the passage of the Act of April 19, 1933, the Jury Board shall not draw exceeding \$50.00 per year. Any effort to apply the law to the services performed prior to April 19, 1933, and subsequent to April 19, 1933, would lead to confusion. It is my judgment that the Legislature intended that the Act become effective immediately: April 19, 1933. If it becomes effective immediately, then the period of twelve months referred to is the twelve months immediately succeeding April 19, 1933. The next twelve months period would commence on the 19th day of April, 1934, and so on. I am, therefore, of the opinion that your compensation as members of the Jury Board of Dale County would be \$5.00 for every day of duty performed prior to April 19, 1933, and that the total for the year beginning April 19, 1933, and ending April 19, 1934, could not exceed \$50.00.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1934.

Hon. Eugene H. Hawkins
Judge of Probate,
Birmingham, Alabama.

Transfer of mortgage to Reconstruction Finance Corporation not
subject to recording tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 15th in which you state:

"I am enclosing herewith transfer from Birmingham Bond and Mortgage Company to the Reconstruction Finance Corporation. The original mortgage was from Vulcan Investment Company to Birmingham Bond and Mortgage Company and has never been filed for record, therefore no tax having been paid. In view of the fact that there has not been collected a mortgage tax on the mortgage and the transfer, now being filed is to the Reconstruction Finance Corporation will, in your opinion, this transfer be subject to a tax, though it is made to an agent of the Government."

If this is filed by the Reconstruction Finance Corporation, no filing tax can be charged in my opinion.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1934.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Probate Judge not entitled to a fee for acknowledgment taken in transferring an automobile tag from one person to another; the Legislature has not provided such a fee.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of recent date has been received. Your letter follows:

"Please advise us whether or not the Probate Judge is entitled to a fee for an acknowledgement taken in transferring an automobile tag from one person to another."

I am unable to find any statute of this State providing a fee for an acknowledgement taken in transferring an automobile tag from one person to another. Because of my inability to find such authority, it is my opinion that this is one of the duties a Probate Judge must perform without compensation.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1934.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Appropriation by Commissioners Court to erect monument for Confederate dead not warranted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 8, 1933, in which you request my opinion as follows:

"Commissioners Court has been requested to make an appropriation to help erect a monument to the Confederate Soldiers of this County."

"Please advise us if the Court can legally make this appropriation."

However much we feel that a monument should be erected to the Confederate Soldiers, there is no authority of law for your Commisisoners Court to make such appropriation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 6, 1934.

Hon. R. L. Shamblin, Sheriff,
Tuscaloosa, Alabama.

Salary of Chief Deputy Sheriff—how paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date, in which you request my opinion as follows:

"Is the salary of the Chief Deputy Sheriff a preferred claim against the county?"

The claim of the Chief Deputy Sheriff for his salary is a preferred claim of the second class, that is, it does not come under Section 231, Code of Alabama, 1923, which sets out what are preferred claims against the County,

but the salary of the Chief Deputy Sheriff being a fixed charge against the County and not being declared a preferred claim of the first class by Section 231, *supra*, it automatically drops to second place and is payable out of the general fund of the county after the claims set out in Section 231 *supra* are taken care of.

This does not mean however, that claims of this character cannot be paid until all claims of the first class are paid but in order for them to be paid when presented there must be enough money in the general fund of the county to take care of all preferred claims of the first class and then whatever amount over and above, may be used to pay claims of the second class such as this one—**Brown, Treasurer vs. Gay-Pagett Hardware Co.**, 188 Ala. P. 423.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1934.

Hon. J. Chandler Burton,
Assistant State Attorney
Home Owners' Loan Corporation,
517 W. 22nd Street,
Birmingham, Alabama.

Acts 1932, page 282—Mortgagee may pay taxes assessed against property on which he holds mortgage, provided the conditions of said Act are present.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Home Owners' Loan Corporation is making loans on distressed homes in the State of Alabama. The loan made is to cover the payment of taxes thereon, repairs, outstanding liens, and the expense of making the loan. We are not authorized, except in cases of redemptions, to pay the taxes on property other than that covered by our mortgage.

"We are advised by some of our county attorneys that the Tax Collectors of their respective counties are declining to accept a check of the Home Owners' Loan Corporation in payment of the taxes on property on which we are making a loan on the ground that they are not authorized to accept payment of a part of the taxes and release the property on which we are making a loan from the tax lien.

"Section 3059, Code of Alabama of 1923, provides for the payment of taxes by mortgagees on the property on which they hold a mortgage provided:

" 'Such persons to whom such real estate is assessed, or for whose taxes said sold or encumbered property is subject to tax lien has sufficient other real estate or personal property returned or assessed and subject to levy or sale out of which the remainder of the tax may be collected by the Tax Collector provided that the portion of the real estate sought to be redeemed is valued separately in the assessment, if it be less than all the real estate included in the assessment.'

"Will you please advise us by return mail whether, in your opinion, the county tax collectors can accept payment from the Home Owners' Loan Corporation for the taxes for the tax year, 1933, on property on which the Corporation is making a loan, provided it comes under the purview of the above quoted part of Section 3059?"

In reply I advise that this matter is governed by Acts, Special Session 1932, page 283, which is substantially similar to Code Section 3059.

Under the Act of 1932 I am of the opinion that you can pay the taxes on the property on which you hold a mortgage without paying the other taxes due by the taxpayer provided the other conditions of the Act are met.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1934.

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

Construction of Alabama Motor Carrier Act of 1931, House Bill 113 approved October 28, 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of October 2, 1933, has been received. Your letter follows:

"Please advise the Commission upon the following questions which have arisen in the course of the administration of our duties namely:

"(1) If a motor vehicle is being operated for hire for the transportation of school students and school teachers to and from the school, is the operator of such motor vehicle subject to the provisions of either Alabama Motor Carrier Act of 1931 or of House Bill 113, Tidwell, approved October 28, 1932?

"(2) In the operation of such motor vehicle, if exempt under said statutes, may the operator thereof be within the exemption if he carries, in addition to school students and school teachers and officials of the school, parents of school children or members of the family or friends of the students and faculty or officials of the school, if they are visiting the school in connection with its educational work on behalf of such students and in connection with the general purposes of such school?

"(3) May an incorporated school in this State, enter into an agreement for the operation of a motor vehicle or motor vehicles within the scope of the above, and such contract be deemed to be a proper contract and the operations thereunder be exempt under said Acts and each of them?"

It is assumed that the transportation in question is not confined to the municipal or police jurisdiction limits of any incorporated city or town. Section 1 of the Alabama Motor Carrier Act of 1931 (General Acts of Alabama Regular Session, 1931, p. 303) excludes all motor transportation companies operating solely and wholly within the limits of any municipality and-or within the police jurisdiction thereof, and Section 2 of the Tidwell Act (General Acts of Alabama, Extra Session, 1932, page 178) excludes motor vehicles for hire while operating within the limits of a city or incorporated town, or within the police jurisdiction thereof, or between two cities or incorporated towns whose city limits adjoin, or within the police jurisdiction thereof.

1. The Alabama Motor Carrier Act of 1931 deals only with common carriers operating over regular routes or between fixed termini. It does not regulate private or contract carriers. A common carrier is a public carrier, that is, one who undertakes for hire to transport from place to place persons or the property of others who may choose to employ him. He holds himself out to carry generally rather than specially. I am of the opinion, therefore, that one who limits his operations solely to the carrying of students and school teachers would not be subject to the terms of the Alabama Motor Carrier Act of 1931.

The Tidwell Act (H. 113), however, regulates not only common carriers over irregular routes, but contract carriers operating over any route or routes. A contract carrier is therein defined (Section 1) to mean "any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public." Without an exception or exemption elsewhere in the Act, the transportation for hire of students or school teachers on the public highways of the State outside incorporated cities or towns would be subject to this Act. But there

is a specific exemption in Section 3 of "motor vehicles for hire while being used exclusively for the transportation of school children and school teachers to and from school." This language is clear and definite.

2. The exemption above mentioned does not include the transportation of parents of school children or members of their families, or the friends of the school children, parents or teachers. **Of course, if no charge is made for such transportation, it would not be subject to the Act.** The Legislature itself has fixed the policy of the State with reference to this matter and there is nothing else for me to do but to state what, in my judgment, the law clearly means.

3. After a careful study of the Act, I do not believe an incorporated school may obtain any exemptions under the Act except those contained in Section 2 relating to the transportation of school teachers and school children to and from school and to transportation within the corporate or police jurisdiction limits of cities and towns and those contained in Section 1 which might be applicable, depending upon the facts and circumstances, particularly the one excepting occasional transportation from the definition of a contract carrier.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1934.

Hon. Landon G. Smith,
Highway Director,
CAPITOL.

Highways—Liability of State Highway Department for damage caused by its employees.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 6, 1933, together with other data, relative to the liability of the State Highway Department for fire damage caused by the negligence of its employee to the bridge over the Tennessee River at Florence, Alabama.

It appears that a part of said bridge was leased by the State Highway Department from the Southern Railway Company. The report shows that the fire in question was started by an employee of the Highway Department. Damage was done not only to that part of the Bridge that was leased to the Highway Department but other parts of the bridge as well. The claim in question appears to be for the repairing of the damage done to that part of

the bridge which was not leased to the Highway Department and over which it had no control. I have been informed that the damage done to that part of the bridge which was leased to the Highway Department has been repaired and paid for accordingly.

You request my opinion as to whether or not the claim in question is a valid claim against the Highway Department and should same be paid in view of the contract between the Highway Department and the Southern Railway Company.

I am of the opinion that your inquiry should be answered in the negative.

The Highway Department is not liable for the negligence of its employees.—**Finnell vs. Pitts**, 222 Ala. 290, 132 So. 2.

Section 4 of the contract in question provides as follows:

"4. That the Highway Department will, at its own costs and expense, keep and maintain the said thoroughfare portion of said bridge, including the timbers under the flooring, the flooring and guard rails, in good condition and repair, at all times during the life of this agreement, so that upon the termination of this agreement, as aforesaid, the same shall be returned to the Railroad Company in good, safe sound and serviceable condition."

Said section does not make the Highway Department liable for the claim in question as same is for damages done to parts of the bridge not included in said section. Since the damages to that part of the bridge as defined in said Section 4 have been repaired and paid for accordingly, there is no further liability on the part of the Highway Department. In my opinion, there is no other section of the contract in question which would make the Highway Department liable for said claim.

I am herewith enclosing the file in this matter.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1934.

Mr. F. D. Norman, Chairman
Board of Registrars,
Anniston, Alabama.

Number of days to be consumed by registrars in registering voters in the various counties.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 5, 1933, in which you request my opinion as follows:

The Code provides that the County Registrars shall sit and register the voters who are eligible during a certain period; also after they have done so the names must be arranged by beats alphabetically in the book for this purpose. This work takes several days after the completion of the time set to register; that is, if the time is 30 days for the board to sit as registrars, it will take several days after that to arrange the names and have them written in the record book. The law provides that the Board shall be paid \$5.00 per day.

Are the members of the board entitled to pay for the extra days it takes to arrange the names of those registered and write them in the record book sent for that purpose?

The law fixes the number of days that may be consumed in the registration of voters at thirty. This can not be changed by adding to. It may come under, but thirty days is the maximum time given registrars for registering voters. If the registrars desire to do so they can use twenty or twenty-five days to do the registering of the voters and then consume the remaining days in carrying out the work you refer to, but the number of days consumed must not go beyond the limit set by statute.

See Act approved August 20, 1927 (General Acts, 1927, p. 274, Section 1)

As to special registration see Act approved October 4, 1932 (General Acts 1932, p. 67).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1934.

Hon. Lamar Wiley, Secretary,
Alabama Public Service Commission,
CAPITOL.

Construction of Section 5 of the Alabama Motor Carrier Act of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of December 5, 1933. Your letter follows:

"Section 5 of Alabama Motor Carrier Act of 1931 (see pages 309-310 of General Acts of Alabama—Regular Session 1931) provides, among other things, as follows:

" 'In case of special or temporary demand for transportation of passengers or property for limited periods, the fees required to accompany application for certificate of public convenience and necessity may be fixed by the Commission in such reasonable amount, differing from those fixed herein, as may be prescribed by general rule or special order; provided, however, all fees prescribed under this Act shall apply in case of such special or temporary demands until otherwise ordered by the Commission.'

"This is to request that you, as Attorney General of Alabama, render to this Commission your official opinion upon the following questions of law, viz:

"**Query 1.** Do the fees referred to in the above quoted portion of said Section 5 of Alabama Motor Carrier Act of 1931 include application fees accompanying applications for certificates of public convenience and necessity covering new operations to serve special or temporary demands for transportation of passengers or property for limited periods, or do they include applications for certificates authorizing the use of one or more additional vehicles on existing operations covered by certificates, for limited periods to serve special or temporary demand for such transportation, or do they include fees in both of the aforementioned instances?

"**Query 2.** Are the fees which may be fixed by Alabama Public Service Commission by general rule or special order, as provided in the above quoted portion of said Section 5, required to be based upon, or fixed in relation to, the number and seating capacity, in the case of passenger vehicles, and the number and rated tonnage, carrying capacity in the case of vehicles transporting property, of the vehicles covered by the application, or may said fees be fixed by the Commission without relation to such factors?"

As to your first query, it is my opinion that the quoted provision of Section 5 of the Act includes both the instances mentioned by you. It is a matter of common knowledge that commerce ebbs and flows and it is entirely reasonable to assume that the Legislature, fully realizing this fact, intended to vest the Commission with the power to mitigate the severity of the established miscellaneous fees required to accompany applications for certificates of public convenience and necessity in any and all cases of

"special or temporary demand for transportation of passengers or property for limited periods whether for new operations or operations already established by previous authority from the Commission.

In answer to your second inquiry, while there is no specific limitation in the language used which would require the Commission in fixing these fees for special or temporary demands for transportation to base them upon the number of vehicles to be used in this manner, that is the general basis upon which the Legislature fixed the regular or usual fees and I think when this fact is considered it is a reasonable construction of the language in question to say that these fees should be based upon, and have direct relation to, the number of vehicles used or to be used. As to whether, in addition to relating these fees to the number of vehicles, the Commission should go further and follow out minutely the legislative plan of giving consideration to the capacities of the vehicles, I think the Commission may use its judgment about this phase of the matter. If the factor of capacity is to be interwoven into the factor of the number of vehicles, upon the basis of a materially reduced fee (assuming that the Commission might, in proper cases, materially reduce the established fee, especially where only a very limited use is to be made of the new vehicle; it might become such a small matter—that is, the capacity factor—as to be of no particular consequence. I think, therefore, with respect to this particular question the Commission is free to exercise its judgment.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1934.

Hon. Lum Duke,
Judge of Probate, Lee County,
Opelika, Alabama.

Provisions of Section 362, General Revenue Act 1919, apply to licenses levied by subsequent Acts.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 13th in which you state:

"The General Revenue Act of 1919, Section 362, page 440 of General Acts of Alabama, 1919, levies for the use of each County in the State a license or privilege tax of 50 per cent of the State license or privilege tax provided for the particular occupation or profession. Section 13 of the General Revenue Act of 1927, General Acts of Alabama, 1927, page

155, sets out a license schedule for hotels, but it is my understanding that the General Revenue Act of 1927 and no subsequent Act of the Legislature has reenacted Section 362 of the Revenue Act of 1919 as above referred to.

"The position is taken by the hotel taxpayer that Section 362 of the Act of 1919, the same not expressly applying to license enacted or reenacted thereafter does not apply to the hotel schedule in the Act of 1927. It is the contention of the taxpayer that the provisions of the Act of 1919, being a Revenue Act, must be strictly construed and cannot and could not levy a tax in favor of the County based upon taxes to be levied in the future. It is also argued that the Act of 1927, being subsequent to the Act of 1919, takes precedence over such Act, and must therefore operate to repeal the provision of the Act of 1919, if it is otherwise operated

"Please advise: whether under the above I should undertake to collect the County license tax in addition to the license provided by Section 13 of the Revenue Act of 1927."

From the language of Section 362 of the 1919 Act which levies a County license on any one "who exercises any privilege or does any act **for which a license is charged by the State,**" it seems clear that the County license is required. This has been the uniform construction both as to the licenses levied by the 1923 Act and the 1927 Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 16, 1934.

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

Construction of Alabama Motor Carrier Act of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of September 16, 1933, has been received. Your letter follows:

"The Public Service Commission requests your official opinion in answer to the following inquiries:

"(1) Where a certificate of public convenience and necessity is outstanding under the Alabama Motor Carrier Act of 1931, giving authority to John Doe to carry on a motor transportation operation under said Act between Montgomery and Birmingham, for example,—if the said John Doe desires to extend the route of his operations under such certificate or an amendment thereof beyond either of said termini, or laterally from any city or town on the route of his existing certificate authorizing him to operate,—for example, from Clanton or Calera to other points,—must his application for such extension, or any extension whatever of the original route, be set down for public hearing and notice thereof issued? "See Section 4 of said Act.

"(2) Upon the filing of any such application as that described in question (1) above, must the Commission require a fee to be paid under the provisions of this Act?

"See Section 5 of said Act.

"(3) Does the question as to whether any such proposed extension of the route is for a few miles only, or for a substantially greater distance, make any difference with respect to the necessity of a public hearing, notice, and the payment of the filing fee?

"(4) If any such proposed extension can be made, at the time the application is presented, without the necessity of operating additional equipment by the operator over what was being then used by him on the original route, does this have any bearing upon the requirement as to public hearing of the application and payment of the fee for the filing thereof?

"(5) If the proposed extension is to be made over a route covered by an existing outstanding certificate owned and operated by another operator in a similar operation, that is, passenger bus or motor freight operation, does this have any bearing upon the requirement of the Act as to a public hearing and the payment of a fee for such extension?"

Your inquiry involves a construction of the Alabama Motor Carrier Act of 1931. (General Acts of Alabama, Regular Session, 1931, p. 303).

Section 4 provides two ways by which the motor carrier operations included within the Act may be lawfully authorized. First, by issuance of a certificate of public convenience and necessity, and, secondly, by the transfer, in some manner to be approved by the Commission, of an outstanding certificate of public convenience and necessity.

It would appear from the Act that the Commission, in issuing original certificates of public convenience and necessity, should fix the termini and also designate, with a reasonable degree of certainty, the intermediate points to be served. You desire to know whether or not, if the holder of a certificate desires to extend his operations either beyond one of the established

termini, or beyond some intermediate point along the route, the application for such extension should be set down for public hearing.

Your first question assumes two situations: First, you inquire about a situation involving an extension beyond the termini, and second, you inquire about a situation involving an extension of several miles, as, for example, from Clanton or Calera to other points. I would not go so far as to say that **any extension**, beyond either the termini or intermediate points would require a public hearing, notice and the payment of the filing fee. In discussing this particular phase, it appears to me that each case must be decided separately. A substantial extension would certainly require a public hearing, notice and the payment of a filing fee. A substantial extension, either in the matter of termini or intermediate points, is such an extension as was in reasonable contemplation at the time of the issuance of the original certificate. Let us assume that the original certificate authorized an operation between Birmingham and Montgomery, and that the operator decides to extend his operations so as to include a settlement two miles outside of the city limits of Montgomery. I do not think that a situation of this kind requires the issuance of a new certificate, a new hearing, notice and payment of a filing fee, because the issuance of the original certificate reasonably contemplated such an operation. However, if the extension, beyond the termini or any intermediate point, is of a substantial nature and not within reasonable contemplation in the issuance of the original certificate, then I think the matter should be treated as an original application for a certificate of convenience and necessity, requiring hearing, notice, and the payment of a fee. In determining whether an extension calls for a hearing, notice and the payment of fees, I think the matter of distance is very important. I would not go so far as to say that **any extension** beyond a termini or out from or beyond any intermediate point would require notice, hearing and the payment of lawful fees. Neither do I think **any extension** would be equivalent to an application for an original certificate of convenience and necessity. The matter involves the exercise of sound discretion on the part of the Commission, a discretion that should be exercised very carefully and never abused. It could certainly never have been contemplated that any original certificate would include an extension which would carry the operation from one town or one point to another town as far removed as five miles. In granting extensions either beyond termini or intermediate points, I think the Commission should consider two things: First, is the extension of such a nature as was reasonably in contemplation at the time of the issuance of the original certificate; second, is the extension of a nature as would increase the business of the operator in such a way as to entitle all interested parties to a notice and hearing. If the Commission can answer the first question in the affirmative and the second question in the negative, then I do not think such an operation or extension would require notice and hearing and the payment of all lawful fees, as in the case of an original application.

The fifth paragraph of Section 5 of the Act which deals with miscellaneous fees to accompany every application for a certificate of public convenience and necessity states that these fees must be based upon the num-

ber vehicles used by the motor transportation companies subject to the Act. Your inquiry raises the question as to whether or not more than one fee may be collected on the same vehicles. Of course, where a certificate holder secures authority to extend his route beyond one of the termini or some intermediate point, and desires to use only vehicles upon which the fees have been paid in connection with a previous application for a certificate, to collect additional fees on these vehicles would result in duplicating the fees paid by that particular certificate holder to the State. That would be a form of double taxation. The general rule is that a statute will never be construed as imposing double taxation if any other reasonable construction can be placed upon it. (*Cooley on Taxation*, p 485; 61 C. J. Section 71, p. 139; *Board of Revenue of Montgomery County v. Montgomery Gas Light Co.*, 64 Ala. 269)

While the miscellaneous fees provided by Section 5 may not in a very strict sense, be classified as a tax, at the same time I think they possess the characteristics of a tax to a sufficient extent to bring them within the influence of the above stated rule of statutory construction. (See *Story on Constitution*. Section 950.) It is possible to construe the Act so as to authorize the duplicate assessment or collection of fees in this manner, but there is nothing in the language of Section 5 or any where else in the Act compelling such a construction. I think therefore, that if any extension of a certificate or route can be, and is, operated by the use of vehicles on which the fees have already been paid no additional fee or fees should be collected. One fee for each vehicle is enough and I think is all the Act contemplates. Of course, for each and every vehicle over and above those upon which the fees have already been paid that is to be used the fee or fees should be paid and collected.

After a careful examination of all provisions of the Act, I do not believe that the existence *vel non* of any outstanding certificate over the same route would have anything to do, one way or the other, with the necessity of a public hearing and the payment of the fee or fees already discussed in connection with the extension of any existing certificate or certificated route.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 16, 1934.

Dr. J. N. Baker,
State Health Officer,
Montgomery, Alabama.

Guarantee of Federal Deposit Insurance Corporation does not relieve officer of the requirements of Section 3973 of the Code of 1923.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 10, 1934, in which you state:

"Section 3973, Code of 1923, places on me as State Health Officer, the responsibility of asking for and taking good and sufficient security from all banks used as a depository for public funds committed to my care. At the present time deposits in most of the banks so used are insured by the Federal Deposit Insurance Corporation.

"This being true, please answer the following question: If banks used by me for the above purpose have qualified with and paid to the Corporation premium or assessment for the protection afforded, is the deposit (never in excess of \$2500.00 at any time) sufficiently guaranteed to make unnecessary the application of Section 3973?"

In reply I beg to advise that the guarantee of the Federal Deposit Insurance Corporation does not, in my opinion, relieve an officer of liability of requiring good and sufficient security from all banks used as a depository for public funds under the provisions of Section 3973 of the Code.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 16, 1934.

Hon. J. H. Killebrew,
Tax Assessor, Calhoun County,
Anniston, Alabama.

Under an Act approved October 7, 1932, providing exemption to the extent of \$2,000.00 for deaf mutes, insane and blind persons, the first exemption allowed under this Act would be for the tax year October 1st, 1932, October 1st, 1933; there would be no exemption for the year October 1st, 1931-October 1st, 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of recent date has been received. Your letter follows:

"By an Act of the Legislature, Extraordinary Session 1932, the Subdivision 6 of Section 3022, Article 2, of the Code of Alabama, was amended to exempt property of all Deaf Mutes, all persons who are Insane, all persons who are Blind to the extent of \$2000.

"Please advise if this exemption can be allowed for the tax year 1932, and if it can not be allowed for the tax year 1932, please advise if it can be allowed for the tax year 1933. (This Act approved October 7th, 1932)."

I have examined the Act approved October 7, 1932, providing for exemptions for deaf mutes, insane and blind persons to the extent of \$2000.00.

It is my judgment that this exemption does not start until the tax year October 1st, 1932—October 1st 1933. In other words, under this Act the first exemption this class of persons would be entitled to would be for the tax year October 1st, 1932—October 1st, 1933. This class would not be entitled to any exemption for the tax year October 1st, 1931—October 1st, 1932.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 17, 1934.

Hon. L. W. Price,
Judge of Probate, Connecuh County,
Evergreen, Alabama.

Justices of the Peace—term of office.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 8th, 1933, in which you request my opinion as follows:

"(1) Justices of the peace and Constables were elected in 1932 and, under the law, will be elected again in 1936.

"In one beat in this County, a duly elected Justice of the Peace has resigned. May a Justice of the Peace be elected in 1934 to fill this vacancy?

"(2) May the Governor appoint a Justice of the Peace to fill a vacancy or may he appoint only Notaries Public-ex-officio Justices of the Peace?"

Answering your first inquiry, where a vacancy has occurred in the office of a Justice of the Peace, the Governor makes an appointment to fill the vacancy for the unexpired term. See Section 8701, Code of Alabama, 1923, which is as follows:

"8701. Vacancies; how filled, etc.—Vacancies in the office of justices are to be filled by appointment of the Governor, and the justice appointed must be duly commissioned, and holds office for the unexpired term of his predecessor."

Answering your second inquiry, I call your attention to Section 9251, Code of Ala., 1923, which is as follows:

"9251. Appointment and term of office.—The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, as defined by law shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is appointed; and shall hold office for the term of four years from the first Monday after the second Tuesday in January, 1911, and every four years thereafter."

A notary public with the powers of a Justice of the Peace, has no relation to the office of Justice of the Peace, except it has the jurisdiction and powers of a Justice of the Peace conferred on it by statute and the fact that you have a notary public with such powers in any given precinct or beat, does not prohibit there being two Justices of the Peace in said beat or precinct in addition to such notary.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 18, 1934.

Hon. John R. Matthews, Register,
Circuit Court of Montgomery County,
Montgomery, Alabama.

In automobile condemnation proceedings, if the amount of money realized or received is less than the amount of the actual court costs, then the remainder of the court costs must be paid by the State of Alabama, as provided by Section 7221 of the Code of Alabama of 1923.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of November 2nd has been received. Your letters follows:

"I beg to state the following facts to you, in a matter now pending in the Circuit Court of Montgomery County, in Equity, and to ask your

official opinion thereon for my guidance in the discharge of my duties as Register of the Circuit Court;

"In all the decrees issued by the Circuit Court of Montgomery County in Equity,, for the condemnation and sale of automobiles, it is provided, where the automobile is condemned, that the Register, after giving due notice, proceed to sell the automobile and that from the proceeds received for the sale of said automobile the Register is directed to pay Court costs and then one-fourth of the remainder to the officers making the seizure, and the remaining three-fourth to be paid to the State of Alabama. (See Section 4782 of the Code)

"In some of these condemnation cases the amount received is considerably less than the amount of the actual cost. In such cases the decree confirming the sale provides that the remainder of the cost shall be paid by the State of Alabama.

"On this state of facts, having in mind that Section 7221 authorizes the apportionment of costs in Equity at the discretion of the Circuit Judge, would the Auditor be authorized and required by law to pay the part of the cost remaining unpaid because the automobile did not bring a sufficient sum to pay the total amount of the cost?"

Your inquiry involves Sections 4782 and 7221 of the Civil Code of Alabama of 1923. Section 4782 provides:

"4782. Proceeds of sale of contraband or forfeited property; distribution and disposition of funds.—The proceeds of the sale of any such property forfeited to the State, whether sold by court decree or by an officer under advertisement, shall, after paying all expenses in the cause, and of advertisement, as the case may be, including the costs of seizure and of keeping the property pending the proceedings, shall be applied as follows: one-fourth to the officer making the seizure and furnishing the proof, but if proof be furnished by another person than the officer making the seizure, one-eighth of the proceeds shall go to the furnisher of the proof and one-eighth to the officer making the seizure and assisting in the condemnation case, or who makes the sale under advertisement. The remainder of the proceeds shall be paid into the treasury of the state as a law enforcement fund to be used and applied for the enforcement of state laws under the supervision and control of the governor, same to be paid out on warrant of the auditor on a bill against the state approved by the attorney general and governor."

Section 7221 provides:

"7221. Costs given to successful party, or apportioned at discretion of court.—The successful party in all civil actions is entitled to full costs for which judgment must be rendered, unless in cases otherwise directed by law, or by the judgment of the court. The court may apportion the

costs at his discretion as justice and equity may require; and this provision is applicable in all cases in which the state is a party plaintiff in civil actions as in cases of individual suitors. In all cases where costs are adjudged against any party who has given security for costs, execution may be ordered to issue against such security; but this section shall not apply to justice of the peace courts; but in such courts, the successful party shall recover his costs."

Under the facts there is not a sufficient amount of money to pay the costs, because the amount received is considerably less than the amount of actual costs. The decree provides that the balance of the costs shall be paid by the State. It is my judgment that such decree is well within the law. I beg to invite your special attention to Section 7221, quoted hereinabove. It is a well known principle of law that Courts are vested with a wide range of authority in the matter of proportioning court costs. This is particularly true in the matter of authority vested in circuit judges. I beg to invite your attention to the following part of Section 7221:

"The court may apportion the costs at his discretion as justice and equity may require, and this provision is applicable in all cases in which the State is a party plaintiff in civil actions as in cases of individual suitors"

Automobile condemnation proceedings are civil actions in which the State is a party plaintiff. It is my judgment that the decree mentioned above is well founded in law and that the State Auditor is authorized under Section 7221 to pay the balance of the costs.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 20, 1934.

Hon. H. L. Stutts,
Judge of Probate,
Florence, Lauderdale County, Alabama.

Carmichael Act—Constitutional.

Opinion by the Attorney General.

Dear Sir:

I have from you the following request for an official opinion as to the constitutionality, on certain phases of the Carmichael Act passed at the 1933 special session of the Alabama Legislature, to-wit:

"Lauderdale County is interested in an important way in the pending application of the City of Florence to borrow from the PWA funds with which to go in the power business. The franchise of Alabama Power Company in Florence has expired and the City hopes to make a cheap contract with the TVA that will benefit both the town and the county.

"The City of Florence, under the Carmichael Act, (1933 Special Session, page 100 has held an election and voted to go in the power business and the pending application for funds is made under the provisions of the Carmichael Bill. Questions are made by the legal department of the PWA on the constitutionality of the Carmichael Bill, and for our assistance in determining our course of action and in the prosecution of the pending application, I hereby request your official opinion on the following points touching the Carmichael Act, to-wit:

"1. Did this Act become law pursuant to compliance with requirements of Section 63 of the Constitution of the State of Alabama."

"2. Were the amendments to the Act adopted pursuant to the provisions of Section 64 of the Constitution of the State of Alabama?

"3. In the event Section 14 of the Act is deleted from the Act as an invalid amendment thereto, does the consequent failure to make provision for an election render the Act unconstitutional for failure to comply with the requirements of Section 232 of the Constitution of the State of Alabama?

"4. In the event Section 14 of the Act is a valid amendment thereto, does the Act comply with the requirements of Section 928 of the Constitution if such compliance is necessary?

"5. Are the instruments authorized by Section 5 of the Act bonds within the meaning of Section 323 of the Constitution and debts within the meaning of Section 225 of the Constitution?

"It is a fact that the City of Florence has outstanding general obligations in excess of seven percentum of the assessed valuation of the property within the corporate limits, and thus under the terms of Section 225 of the Alabama Constitution has exceeded her debt limit."

Replying on those phases covered by your letter, as assuming as you state that the City of Florence has exceeded its constitutional debt limit, I advise you as follows:

A careful search of the journals of both houses of the legislature discloses that the Act and its amendments were legally created under the requirements of Section 63 and 64 of the 1901 Constitution of Alabama. The Carmichael Bill was passed at a special session of the legislature, called by the Governor of Alabama, but the subject matter of the Act was not embraced

in the Governor's call. In such circumstances any law passed by the legislature must be enacted by a two-thirds vote of each house. The Supreme Court of Alabama has determined (*Farmers Union Warehouse Company vs. McIntosh*, 56 So. Dep. 102):

"Under Constitution 1901. Section 62, which provides that a majority of each house shall constitute a quorum to do business', the majority of each house present and taking part in the action is to be regarded as the body referred to as one of the branches of the legislature."

My attention is called to this fact: The senate journal shows that on the final passage of this bill in the senate, the vote was twenty-two yeas, and eleven nays, but that Senator Cooper announced a pair between himself and Senator Brown, who was absent, and that if Brown were present he would vote for the bill, but in the absence of Senator Brown he was not voting. In my opinion, under the constitution and laws of Alabama, and construction by the Supreme Court of Alabama, this vote constituted a passage of the bill by a two-thirds of the senate of Alabama. Thirty-three members of the senate were present and voting, and they constitute a quorum, and two-thirds of the body present and voting adopted the bill.

Answering your third and fourth inquiries: Section 228 of the 1901 Constitution of Alabama provides that no bonds shall be issued by a municipality "unless such issue of bonds be first authorized by a majority vote by ballot of the qualified voters of such city—etc." Section 225 of the Constitution provides that a municipality of more than six thousand population shall not incur debts exceeding seven per cent of the assessed valuation of the property in the town. The Carmichael bill provides:

"Section 2. For the purpose of defraying the cost—such city may borrow money—but no such city that has reached or exceeded its constitutional debt limit—shall bind its general credit or incur any personal liability, or charge any general or special fund other than that herein authorized, or charge any profit other than that herein authorized, for the re-payment of such borrowed money or the payment of interest thereon. Section 9. Any such city which borrows money under the authority of this act may evidence the loan by an instrument—but no such instrument shall purport or be effective to impose upon the borrower or borrowers, funds or property any liability in excess of or inconsistent with the liability authorized to be assumed by this Act."

The Supreme Court of Alabama has determined (in re. *Opinions of the Justice* 145 So. Rep 431) on a similar act regarding construction of waterworks plants by municipalities (Act of November 8, 1932) the bonds issued for construction of waterworks, payable solely from revenue of the plant, are not obligations of the City of such type as to violate Section 225 of the Constitution which limits the debt of municipalities. The opinion cites many authorities in a later deliverance. (*Opinion of the Justices*, 148 So. 111 the

Supreme Court declared regarding a similar act (House Bill No. 385, Act of March 23, 1933) these things:

"1. If the municipality owns a waterworks system and issues bonds for construction purposes, and pledges only waterworks revenue for payment, and does not otherwise obligate itself, the bond issue is not a debt effected by constitutional limitations."

"2. Section 222 of the 1901 Constitution requiring a municipal election for a bond issue does not apply here the bonds do not create a debt of the municipality."

It is my opinion under the facts regarding the Florence case, that bonds issued by the City of Florence to purchase or construct a new power system (the City not owning an existing power system) under the Carmichael Act do not constitute debts in violation of the Constitution of Alabama. They are not bonds in the constitutional sense requiring the vote of the people. It is my further opinion that the provisions of Section 1A of the Carmichael Act are not necessary to the effectiveness of the Act insofar as the owner of the Town of Florence to issue lien bonds in the present circumstances is concerned.

After a consideration of the Act in all its aspects, I am of the opinion that the same is constitutional.

Yours very truly,
THOMAS E. KNIGHT, JR.
Attorney General.

January 23, 1934.

Mr. I. C. McWhorter, Chairman,
Board of Registrars, Clay County,
Millerville, Alabama.

Name of person convicted of manufacturing liquor, even though he is placed on probation by the Judge, should be stricken from the list of qualified voters.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 8, 1934, in which you request my opinion as follows:

"If a man has been convicted for making whiskey and sentenced to the penitentiary for a term of two to three years, and his sentence was

suspended, and he was put on probation, should his name be stricken from the list of qualified voters of the county?"

My answer to the above question is in the affirmative. The law says that the name of any person convicted of a crime involving moral turpitude, or in other words, a felony, should be stricken from the list of qualified voters, and should remain off of the list until his civil and political rights have been restored by the Governor. The fact that he is on probation could make no difference.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 23, 1934.

Hon. A. F. Harman,
State Superintendent of Education,
Montgomery, Alabama.

1. The three mill district school tax levied and collected as provided by Section 2 of Article XIX of the Constitution of the State of Alabama, may not be used in payment for erection of a county high school building.

2. If a building, at first intended to be erected for a county high school building be subsequently designated as a unit of the high school system of the County, with a defined territory or district for patronage making the district or territory for patronage the same as the school district in which the school building is erected, as provided by Section 168 of the School Code of Alabama, then the three mill district school tax for such district may be pledged for borrowing money to be used in the erection of such building, provided the tax was voted for school purposes for the length of time pledged.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of January 16, 1934, to hand with letter of Mr. B. L. Balch, County Superintendent of Education of Fayette County of January 12th to you attached. You ask my opinion as to the matters inquired about by him. His letter to you reads as follows:

"In the erection of the Fayette County High School building which was destroyed by fire some weeks ago, the County Board of Education has authorized the issuance of \$5,000.00 in tax warrants against the Fayette District Tax. It is my understanding that some years ago it was not legal to appropriate the proceeds of the district tax to the erection or

upkeep of county high school buildings. In the light of new legislation whereby county high schools are placed directly under county boards of education, I should like to know if we may legally use the proceeds of the Fayette District Tax, in which district the County High School Building is located for that purpose?

"The County High School and Fayette District Elementary School are operated under one principal, however, quite a number of pupils from various sections of the County do attend the County High School.

"If you are not in a position to give me this information and an opinion from the Attorney General is necessary, will you please file a request for such an opinion. It is essential that this information be had at your earliest convenience as we want to issue the warrants right away."

If not in the manner suggested, what method may be used in order that said district school tax may be used to complete said school house?

In reply will say that Article XIX of the Constitution of the State of Alabama, which authorizes the levy and collection of the three mill district school tax provides:

"The funds arising from the special school tax levied in any district which votes the same independently of the County shall be expended for the exclusive benefit of the district as the law may direct."

According to your letter, the school house which you are erecting is the Fayette County High School building and as long as it so remains it is evident that money spent in building it is not expended for the exclusive benefit of the school district in which it is situated.

Section 461 of the School Code of Alabama provides among other matters not material to the issue, as follows:

"And provided further that in order that the most satisfactory and economic plan of administration may be secured county high schools may, at the discretion of the County Board, be designated as a unit in the high school system of the County, with a defined territory or district for patronage, in just the same manner as other public schools under the supervision of County Boards of Education."

If steps are taken, as in the last quoted paragraph indicated, and the school is made to apply exclusively to the school district in which it is situated, which has voted a tax of not more than three mills for such school district as provided by Section XIX of the Constitution of the State of Alabama, then such three mill tax may, in my opinion, be used as stated in your letter in building such schoolhouse.

It will be noted that the pledging of the district three mill school tax for the building of schoolhouses in the district, for the benefit of the district is in accordance with Article XIX of the Constitution of the State of Alabama and of Sections 137, 281, 282 and 283 of the School Code of Alabama.

Such pledging of the district school tax for the purpose of building a school for the district which may be used by the schools of the district in succeeding years is quite different from the borrowing money and pledging such tax for paying the current expenses of running schools as provided by Section 130 of the School Code of Alabama as amended by Act No. 25, approved March 8, 1933, which can never be used again after the year in which it is spent.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 23, 1934.

Hon. F. D. Dexter,
Treasurer of Wilcox County,
Camden, Alabama.

Limitation of Action—County Warrants.

Opinion by the Attorney General.

My dear Sir:

I have, upon the presentation of additional sections, reconsidered the opinion of this office of July 18, 1933, relative to authority to pay certain county warrants issued several years ago. One of these warrants was issued to M. C. Weir, November 8, 1920; another to M. C. Weir, February 14, 1921 and another to the Wilkinson Mercantile Company November 16, 1921. The former opinion of this office referred to, held that the statute of limitations, under Sections 8943 and 8944 of the Code of Alabama, 1923, had barred the payment of the same.

I have been advised by Bloch Brothers that they have repeatedly demanded payment of the warrants and that in each instance, until now, the County was unable to pay the same. I have also been advised that the account was stated by and between the holders of the warrant and the County. If the account was stated by and between the County or some one in authority acting for the County and the holder of these warrants each time the account was stated, prior to the expiration of the period of limitation prescribed by statutes in such cases, that is to say, six years, the period was renewed for a like length of time.

If Bloch Brothers are able to satisfy you that they did make demand for the payment of these warrants and the account was not disputed, I am of the opinion that you would be authorized now to pay the same in that if the account was stated by such demand and such failure to dispute, the statute of limitations would not have barred payment of this claim.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

January 24, 1933.

Hon. J. A. Lee,
County Superintendent of Education,
Selma, Alabama.

School busses—Requiring liability insurance on;

School busses—Raising salary of drivers.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 22, 1934, together with other correspondence in which you request my opinion as to whether or not the County Board of Education may require school bus drivers to carry liability insurance on their school busses, and if so, may County Boards of Education increase the salaries of said drivers in order to pay the premiums on said insurance policies.

In answer to your inquiry, wish to state that both the matter of requiring liability insurance on school busses and the amount of salary paid school bus drivers are matters entirely within the discretion of the various County Boards of Education.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 29, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Under the language of Schedule 78, Acts 1919, page 282, Section 361, a licensed pawn broker cannot sell pistols without taking out the additional license required of dealers in pistols.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 12, 1934, in which you state:

"On account of a decision of the Court of Appeals as appearing in Southern Reporter 149, page 714, having reference to Pawn Broker's license, the Comptroller's office is having certain demands made upon it through claims filed on the part of certain applicants for the refund to them of money paid for 'Dealers in Pistols', where such applicant had already taken out license to do business as Pawn Broker.

"Please advise this office whether or not there is any authority of law under the Decision of the Court of Appeals to which reference is made of the State Comptroller's office to allow claims as above mentioned and to issue warrants in payment thereof."

I have carefully read the decision in the case of State vs. Levy Loan Company, 149 So. 714. This case quotes at length and is based upon the authority of Morningstar vs. State, 135 Ala. 66, 33 So. 485.

At the time of the decision in the Morningstar case Schedule 59 of the Revenue Act of 1901, Acts 1900-1901, page 2028, levied a license on pawn brokers in this language:

"For each pawn broker \$75.00."

Schedule 63 of the same Act levies a license on dealers in pistols, etc.

Since the Morningstar case and apparently to meet the construction there given, the Legislature has rewritten the pawn brokers license Schedule in this language:

"For each pawn broker, \$250,000; but this shall not be construed to allow the sale of pistols unless an additional license is paid as required by this Act."

Schedule 78, Acts 1919, page 282, Section 361.
Schedule 138, page 293, of 1929 Compilation.

Section A of the Acts of 1919, page 1085, levies a license on dealers in pistols, etc.

The opinion of the Court of Appeals in the Levy Loan case makes no reference whatever to the exception contained in the pawn brokers license. It is reasonable to assume that the particular language of this Section was not submitted to the Court of Appeals and that the case was decided merely on the pistol dealer's license as construed in the Morningstar case.

With the statute so clear and unambiguous stating that the taking out of a pawn broker's license shall not be construed to allow the sale of pistols unless an additional license is paid as required by the Act of 1919, I cannot but advise you to disallow any claims for refund of license paid by dealers in pistols based on the claim that a pawn broker's license has been secured.

Yours very truly,
THOMAS E. KNIGHT, JR.
Attorney General.

January 29, 1934.

Hon. Grover C. Hall,
Judge of Probate Montgomery County,
Montgomery, Alabama.

Before persons can vote in Alabama they must have paid all poll taxes due by them from the time they become twenty-one up to, and including forty-five years of age, or since they have become citizens of the State unless specially exempt by statute.

Opinion by Assistant Attorney Haynes.

Dear Sir

I have your letter of January 6th enclosing letter from Hon. Frank L. Grove addressed to you January 5, 1934, in which you, through this letter, request my opinion as follows:

"A voting citizen of Missouri moved to Alabama about the first of January, 1928, and has lived in Montgomery continuously since, but has never voted here. This citizen now desires to register as an Alabama voter. Will it be necessary for her to pay a poll tax for each of the six years since coming to Alabama or for only the two years required of non-residents to acquire the franchise privilege? The fact that she has had the right to cast an absentee ballot in Missouri during these six years suggests the possibility that she need pay a poll tax for only the two years. This opinion has been confirmed to me by one of our neighboring judges of probate, but I should like to have it confirmed by you since

the above mentioned citizen desires to vote in Montgomery. She registered recently and will pay her poll tax before February 1st."

It is my opinion this person would have to pay each year since she became a resident of the State of Alabama. The payment of poll tax is not a primary prerequisite to voting. It is a charge against each citizen of the State, male and female, between the ages of twenty-one and forty-five, and our Constitution simply, after fixing this tax, makes the provision which leaves it optional with each and every citizen as to whether he or she pay the same, but provides further that if they fail to pay for any one year they cannot vote in any State, County or municipal election until they qualify by paying such poll tax due up to date

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 29, 1934.

Hon. Thos. D. Brooks,
Superintendent of Education,
Hamilton, Marion County, Alabama.

Salary of Superintendent of Education was not decreased by action of the Board of Education on May 26, 1933, which action was subsequent to the action of the Board electing said Superintendent for a term of two years.

Opinion by the Attorney General.

My dear Sir:

I have your letter of November 11th which was just this date handed to me. You state that on August 15, 1932, you were elected Superintendent of Education for a term of two years, the term to begin July 1, 1933. You also state that subsequent to your election and after your acceptance of the position but prior to taking office on July 1, 1933, the Board of Education theretofore on May 26, 1933 passed a resolution attempting to reduce your salary.

I am of the opinion that after your election as Superintendent of Education for a term of two years at a salary of \$3,780.00 per year, the County Board of Education was without the power to reduce your salary to \$200.00 per month for twelve months.

Section 281 provides that the salary of no officer of this State or County may be increased or diminished during the time for which he was elected or appointed. The Superintendent of Education is an officer of the County.

Therefore, having a term of office, he is protected by Section 281 of the Constitution.

Petree vs. McMurray, 210 Ala. 639; Majority opinion McMurray vs. County Board of Education of Franklin County, 216 Ala. p. 144.

I hope the foregoing furnishes you with the information you desire.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 29, 1934.

Hon. Grover C. Hall,
Judge of Probate, Montgomery County,
Montgomery, Alabama.

Contingent Fund provided by Senate Bill No. 109, General Acts 1931 page 152, not affected by passage of Sparks Amendment.

Opinion by the Attorney General.

Dear Sir:

I have your letter of more or less recent date in which you inquire whether or not the Sparks Amendment repeals the Act of the Legislature approved February 28, 1931, making appropriation for contingent expenses in the office of the Judge of Probate of Montgomery County.

In answer to your inquiry I am of the opinion that any fund provided by the Legislature for the expenses of running the office of Judge of Probate, is not affected by a proposition which was submitted to the people of the State called the Sparks Amendment.

To determine this question it is necessary to consider the Act, Senate Bill 109, by Judge Teasley, approved February 28, 1931. The Act makes provision for the salary of all Judges of Probate in certain counties in the State and also makes provision for an allowance for clerical help, and further provides the sum of \$1,200.00 for such "ex-officio services and other contingencies to be paid to the Judges of Probate in equal monthly installments. By the terms of the Act this is an appropriation made for a contingent expense. A contingent expense must be deemed expense pending upon some future uncertain event. The adjective "contingent" as used in the appropriation bills to qualify the words expenses has a technical and well understood meaning. The Legislature was but following a custom of Congress in this instance, when it enumerated the principal classes of expenditure, such as clerical hire, etc., and then made a small appropriation from the amount of disbursements in-

cident to any great business, which cannot well be foreseen and which would be useless to specify more accurately. For such disbursements a round sum was by the Legislature appropriated under the head of "contingent expenses."

Dunwoody vs. U. S. 22 Court of Claims, page 269, 280.

People vs. Village of Yonkers (N. Y.) 39 Barb. 266.

The practice of making such appropriations is by no means novel. Contingent expenses have been defined as such expenses as are positive or liable, but not certain to occur.

Hanler vs. Coleman, 95 N. Y. 696.

Sometimes appropriations are made for contingent expenses to meet some unforeseen disaster, or an extraordinary emergency.

Atkinson vs. City of Topeka, 149 Pac. 697.

Very probably, the Legislature, acting within its constitutional power, in the passage of the Teasley Bill, took into consideration that some emergency might arise in the offices of the Judges of Probate in certain counties, which are not taken care of by specific appropriations.

I hope the foregoing discussion and expression of my opinion furnishes you with the desired information.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 30, 1934.

Hon. C. S. Culver,
Tax Collector, Etowah County,
Gadsden, Alabama.

(1) Sparks Amendment to the Constitution makes House Bills 399 and 420 (Special Session 1932, pp. 170 and 171) effective on first of month next succeeding adoption of amendment. (2) Tax Collector pays to Tax Assessor all fees and commissions due him.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 10th, in which you state:

"1. Is the Sparks Amendment, ratified by the people at the last special election applicable to county officials as to the \$6,000.00 limita-

tions in fees and commissions? If the amendment in question is applicable to county officials, whose compensation is based on fees and commissions, from what source does the compensation for clerical help in the several county offices come?

"2. House Bills 399 and 420 were passed during the 1932 session of the 1931 Legislature, effective at the expiration of the terms of the Collector and the Assessor. Does the ratification of the Sparks amendment make these two measures effective during the present terms of the Collector and the Assessor?

"3. Under the statute the Assessor is paid out of the first taxes collected of the 1933 taxes for his work in preparing the 1933 Collector's Abstract and the Collector is required to honor this demand of the Tax Assessor. Does the Sparks Amendment or the House Bills 399 and 420 affect this procedure?"

In answer to question 1, I enclose opinion to Hon. W. W. Brandon, which answers your questions.

It is my opinion that the ratification of the Sparks Amendment makes said House Bills 399 and 420 of the Legislature of 1932 (Acts Special Session 1932, pp. 170 and 171) effective on the first of the month next succeeding the adoption of the amendment.

The Collector makes all the settlements with the assessor required by law. It is my opinion however that the Sparks Amendment going into effect as it did on September 1, 1933, does not effect the fees and commissions of the assessor, which were actually earned prior to the adoption of the Amendment.

Opinion of Attorney General to John S. Pollard, Tax Assessor, Dallas County, Oct. 17, 1933.

This opinion assumes that the Sparks Amendment is a properly adopted provision of the Constitution and pretermits a consideration of the constitutionality of such a provision.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 30, 1934.

Hon. J. M. Gray, Chairman,
Walker County Commission,
Jasper, Alabama.

In procuring a right of way for a State road a County may legally compensate an individual for damages resulting to such individual by construction of a road on such right of way.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter relating to the securing of a right of way for a road built by the State in Walker County has been received. Your letter follows:

The heirs of "A" deeded a piece of ground to Walker County, for a right of way. "B" had a twenty year lease on part of the ground that the road was built on. The lease was not recorded but "B" was living in the house at the time the right of way obtained and is still living in said house.

Part of "B's" front yard was covered by the building of a road, and now when a heavy rain occurs the water backs up under "B's" house and in his yard.

"B" filed a claim for right of way with Walker County.

There was no trade or agreement between "A" and "B" in regard to the damage or right of way.

Would the County Commission be justifiable in paying "B" for the right of way or any damages for the water backing up in his yard and under his house.

"A" deeds a piece of land to Walker County for a right of way. Prior to this conveyance "A" had leased this plot of ground to "B" for a period of twenty years and "B" is living on a part of the land at this time, and was living there at the time road was built. When a heavy rain occurs the water backs up in "B's" yard around "B's" house.

I do not attach any significance to the failure on the part of "B" to record the lease. I assume there is no question as to "B's" rights under the lease, that is, I assume that his leasehold interest is regular.

Under the facts just stated, it is my judgment that Walker County may legally pay "B" reasonable damages caused by the backing up of the water in his front yard. I am assuming that the construction of the road causes this backing up of water in "B's" yard. It is my judgment that the back-

ing up of the water in this man's yard is sufficient to damage "B". That is, to damage his leasehold interest in the land. The County would be warranted in law in paying this damage. It should be considered a part of the costs incident to procuring the right of way.

Section 21 (1331) of the Highway Code of Alabama places upon the county the duty of providing a right of way. It is the duty of the county to acquire such a right of way. In procuring such a right of way the county must be mindful of the rights of those who may be damaged by such an act on the part of the county.

Our Supreme Court has recently held that while the State cannot be sued its immunity from suit does not relieve the officers of the State from their responsibility for an illegal trespass or tort on the rights of an individual, even though the State acts pursuant to authority attempted to be conferred by the State.

Elmore vs. Fields, 153 Ala. 345, 25 R.C.L. 414;

Hopkins vs. Clemson College, 221 U. S. 636;

Finnell et al vs. Pitts, 132 So. 2.

It is my judgment that your County should, in procuring a right of way of this kind, take into consideration damage done to others in procuring the right of way.

State Comptroller.

It is my judgment that the County is well within its legal rights in paying to "B" compensatory damages in settlement and satisfaction of damages actually done "B" by the backing up of the water in question on the yard around "B's" house.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 30, 1934.

Hon. James H. Hard, Jr.,
CAPITOL.

When sheriffs are entitled to pay for returning absconding felons without requisition.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 6, 1933, in which you request my opinion as follows:

"A Sheriff under authority of Section 3742 of the Code of Alabama, 1923, went to another State and removed a prisoner who was charged with a felony. Said prisoner on trial was convicted and given a sentence of not less than eighteen months and two days, and upon motion of the defendant and with the approval of the Solicitor, the Court ordered that the sentence imposed upon the defendant be suspended pending good behavior of said defendant but that such suspension of sentence should not in any event be for a term longer than five years from the date of the sentence.

"Will you please advise whether or not the Sheriff is entitled to receive compensation from the State for the removal of the prisoner under the above statement of facts."

It is my opinion the sheriff would be entitled to such expenses under Section 3742, Code of Alabama, 1923, which is as follows:

"3742. Criminal returning to state without requisition; fees of sheriff.—In cases where any sheriff in this state receives notice from the authorities in another state that a party or parties is or are arrested for crime committed in this state, and the sheriff of the county in which said crime was committed goes to the state aforesaid and the party or parties aforesaid consents to return with said sheriff without requisition from the governor, said sheriff shall be entitled to the fees and expenses now provided by law where requisitions issue. But this section shall apply only to felonies and only where conviction of the party or parties is had."

You will note that the above section says among other things: "But this section shall apply only to felonies and only where conviction of the party or parties is had." You say he was charged with a felony and that he has been convicted. This is all the statute required and the fact that the judge suspended the sentence, could, in my opinion, make no difference.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 30, 1934.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Affidavits or acknowledgements taken by the Judge of Probate in his official capacity must be charged for and account made of same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 2, 1934, in which you request my opinion as follows:

"In the filing of claims to be passed upon by the Commission's Court most of the claims are sworn to before the Probate Judge. There are numerous other affidavits that he is called upon to take from time to time. In the past we have done this work without charge.

"Please advise us if the Probate Judge is required to collect a fee for each affidavit."

It is my opinion under what is known as the Sparks Amendment to the Constitution of Alabama of 1901, and indicated as Article 24, passed by the House of Representatives and the Senate March 9, 1933 (General Acts, Special Session 1933, p. 46) you would have to charge for such affidavits and keep an account of same. You see this is a part of the fees or compensation of your office, and such fees or charges, under the Amendment referred to above, cannot go above \$6,000.00 per annum, and the fees you refer to come to you by virtue of your office as Judge of Probate, and must be taken in account in determining whether or not you are above or below the fixed amount of fees or compensation allowed for any one official year, viz: \$6,000.00.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 30, 1934.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Cancellation of warrants under Section 385, School Code of Alabama, 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter in which you state the following facts:

"Under the provisions of Section 385 of the Alabama School Code of 1927, warrants issued for the purpose of erection, repair or equipment of buildings are cancelled when the project for which said warrants were issued is not fully completed. Such warrants were certified into the State Treasury to the credit of the county for which they were originally issued. In view of the provisions of an opinion rendered by you under date of May 11, 1933, it is unnecessary for warrants to be issued at the time applications are approved but the funds are encumbered and warrants issued when the projects completed are inspected by this Department in accordance with Section 384 of the Alabama School Code of 1927.

"The total amount of these encumbrances existing against the Rural Schoolhouses Fund is reported to the State Comptroller at the close of the fiscal year but the records of this Department show that certain amounts are encumbered for certain projects in certain counties. If the amount for which an application has been approved is cancelled, the total amount of encumbrances as reported to the State Comptroller will not be affected but the records of this Department will show that a sum equal to such cancellation is credited during the current year to said county and is applicable for aid on some project other than that for which the original application is made."

In view of the above, you request my opinion as follows:

"If a county board of education is unable to complete a project on which application for state aid has been approved and for which certain funds are encumbered and requests that the application be cancelled, will the encumbered funds represented by the original applications be retained to the credit of the county and made subject to a new application?"

I am of the opinion that your inquiry should be answered in the affirmative.

Section 385, School Code of Alabama, 1927 provides that where warrants are cancelled in compliance therewith, that same shall be credited in favor of the county for which the warrant was originally drawn. The mere fact that under the Budget and Financial Control Act warrants could not be issued until cashable and that the funds were merely encumbered, would not, in my opinion, alter this phase of the procedure heretofore followed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

February 14, 1934.

Hon. Alex Brantley,
Judge of Probate.
Troy, Pike County, Alabama.

To vote in Primary Election held under the General Primary Law of the State, a person must be twenty-one years of age.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your telegram in which you desire to know whether or not a person who registers now, but who will not be twenty-one years old until August, 1934, can vote in the Primary.

He cannot. The same qualifications to vote in a Primary Election are the same as are required for voting in a general election and one of these requirements is that he is twenty-one years of age.

Section 361, Code of Alabama, 1923, is as follows:

"Every citizen of this state who is a citizen of the United States, and every resident of foreign birth, who, before the ratification of the present Constitution of the State, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in section 364 (293) of this Code, and who shall have resided in this State at least two years, in the county one year and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the year 1901, and for each subsequent year, shall be an elector, and shall be entitled to vote at any election by the people."

See also an Act approved February 25, 1931, (General Acts, 1931, p. 70) and Section 1 of said Act known as the primary law, which reads in part as follows:

"That a Primary Election, within the meaning of this Act is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or private office. * * * * "

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 13, 1934.

Hon. Wm. C. Oates,
Secretary-Examiner,
State Securities Commission,
Montgomery, Alabama.

Registration of brewery stock.

Opinion by the Attorney General.

Dear Sir:

I have your letter of February 7th enclosing application for registration of brewery stock. You state that you had filed with you application showing two companies for registration of their respective shares of stock.

You inquire whether or not the Commissioner is authorized under the law to grant registration to the stock of these brewery companies. You also inquire if such brewery companies can, if registration be granted to said stock, lawfully call and offer for sale such stock in this State, in view of the prohibition laws of Alabama. I note in each instance, the Articles of Incorporation of these companies show: "To manufacture, buy, sell and generally deal in any and all malt beverages, which are now or may hereafter be lawful under the laws of the State of Alabama; - - -" I note further the following statement is included in each application:

"The corporation shall have no right or authority to sell, keep for sale or otherwise dispose of, or store, warehouse, deliver or transport any liquors or beverages which are now or may hereafter be prohibited by the laws of the State of Alabama, or be in any wise concerned in the traffic therein, and if such corporation shall do or perform any act which is specified above it cannot do or engage in, it shall forfeit its charter, which forfeiture may be declared by a court of competent jurisdiction in quo warranto, if any person or officer wishes to bring suit."

This statement was of course made with the design of complying with the second paragraph of Subsection 8 of Section 6985 of the Code of Alabama, 1923.

Of course, under the present laws of the State of Alabama, no malt or brew beverage may be sold except in compliance with the Edgar Act, permitting the sale of beer or cereal beverages containing not more than one-half of one per cent of alcohol. With the statement in the application following the section of the Code last above referred to, I see no reason why a corporation might not sell its stock when it is engaged in lawful sale, manufacture or distribution of a lawful beverage.

Yours very truly,
THOMAS E. KNIGHT, JR.
Attorney General.

February 13, 1934.

Hon. A. F. Harman,
Superintendent of Education,
CAPITOL.

1. If educational unit has actually paid interest on its own obligations since July 1, 1933, which were secured by State warrants refunded by State bonds, such unit is entitled to interest accrued on State bonds.

2. If it has not, such interest should be paid holders proportionately, and its own interest obligation reduced pro tanto.

3. Where a non-interest bearing certificate or obligation has been issued or created on such security the holder of the certificate or obligation is entitled to the proportionate part of the interest received from the State Bonds.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"In view of the many inquiries being made of this Department. I will thank you to advise me on the following questions:

"If an educational unit of the State has issued certificates of indebtedness or conditional warrants against State warrants held by said unit and if said certificates of indebtedness or conditional warrants bear interest, will the holder of the certificates of indebtedness or conditional warrants be entitled to the interest coupons attached to the State bonds which he will receive in lieu of said certificates of indebtedness or conditional warrants?"

"If these certificates of indebtedness or conditional warrants hypothe-
cating specific State warrants do not contain an interest provision, will the holder of said certificates of indebtedness or conditional warrants be entitled to the coupons attached to the State bonds that he will receive in lieu of said certificates of indebtedness or conditional warrants?"

"If an educational unit has a certain amount of indebtedness outstanding that was incurred prior to October 1, 1932, which indebtedness is secured by State warrants held by said educational unit, will the teachers who have rendered services or the concerns that have furnished materials, which services and materials constitute the indebtedness outstanding as of October 1, 1932, be entitled to the interest coupons that are attached to the State bonds presented in payment of such services or materials?"

"The interest coupons referred to above are for the period preceding

the time that the State bonds will actually be available for transfer for State warrants or indebtedness as provided for in Act No. 294 of the 1932 extraordinary session of the Legislature."

Answering your questions in order, I advise:

1. In my opinion where an educational unit has issued certificates of indebtedness or conditional warrants secured by State warrants which are or will be paid or refunded with State bonds issued under the authority of the Warrant Refunding Amendment, and which certificates bear interest since July 1, 1933, the educational unit is entitled to the interest on the State bonds accrued since July 1, 1933, if such unit has actually paid interest since July 1, 1933, on its own issue.

If however, interest on its own certificates since July 1, 1933, has not been paid, the interest accrued or received on the State bonds should be paid to the holder of the unit's certificate, according to his proportionate part, and the interest obligation of the unit reduced pro tanto.

2. Where the unit's certificate or conditional warrant, thus secured does not contain an interest provision, I am of the opinion that the holder of such certificate or warrant, is entitled to receive his proportionate part of the interest received by the unit on the State bonds.

3. While the foregoing refers to cases where the unit has issued its own certificates or conditional warrants the same rule applies to other holders of obligations created or incurred on the security of State warrants which have or will be paid or refunded by State bonds under the Warrant Refunding Amendment.

In other words, it is my opinion that the certificates issued or the obligations created by the unit, secured by the State warrants, paid or refunded by the Warrant Amendment, represent in fact and in equity, a proportionate interest in the State bonds, and the holder should be paid his proportionate part of the interest received from the State bonds.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 14, 1934.

Hon. H. H. Montgomery,
Superintendent of Banks,
CAPITOL.

Construction of an Act found at page 21 of the General Acts of Alabama, Extra Session, 1932, authorizing the Superintendent of Banks to

borrow money on behalf of a closed bank or trust company and to secure the same by a pledge of the assets of such bank. The Act does not violate any provision of the State Constitution and violates no provision of the Federal Constitution.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of January 19th has been received. Your letter follows:

"Under the Act of the Alabama Legislature approved September 20, 1932, Acts 1932, pages 21 and 22, entitled, 'An Act to Authorize The Superintendent of Banks To Borrow Money On Behalf of a Closed Bank or Trust Company and to Secure the same by a Pledge of the Assets of such Bank or Trust Company for the Purpose of Protecting and Preserving the Assets of the Bank, of Paying Secured Claims, of Aiding in the Reorganization or the Reopening of the Closed Bank, and-or of Making Distribution to Depositors and Creditors,' the Superintendent of Banks of the State of Alabama was authorized to borrow money and pledge the assets of a closed state bank for the purpose therein designated.

"Please advise me as to the following legal questions involved in interpreting said statute viz:

"(1) Is the said Act constitutional as to the following features:

(a) Is it legal for money to be borrowed and the assets of the closed bank pledged to secure the debt, in the manner prescribed, for the purpose of paying secured creditors, and for making distribution to depositors and creditors?

(b) Is this valid as against creditors and-or depositors whose debts and-or deposits were made prior to the enactment of said statute?

(c) Is the provision that, 'Any note or other contract executed for the purpose hereof shall be treated as the obligation of the bank and the holder thereof shall have the character of a creditor of the bank for the amount of the deficiency in the security furnished,' constitutional? In other words, can the lender in such case legally regard itself as the creditor of the bank in the manner prescribed by the statute?

(d) Is the provision that the Court may hear the petition prescribed in Section 3 of the Act without notice to anyone valid?

(e) In view of Section 6309 of the Code of Alabama of 1923, will a mortgage of real estate of the Bank, executed by the Superintendent of Banks, under authority of the Court, granted in pursuant to said Section 3 of said Act be valid if no notice of the hearing on the petition of the Superintendent of Banks is given?

"(2) Does said statute authorize the Superintendent of Banks to execute a mortgage conveying real estate belonging to the Bank to secure a loan obtained under the provisions of said Act?

"(3) Does any right of appeal exist from the decree entered on the petition of the Superintendent of Banks, the filing of which petition is prescribed by Section 3 of said Act? If so, what is the period of said appeal? In whom does it vest?

"(4) Attached hereto is a form of a power of attorney and certification prepared for execution by the Superintendent of Banks in connection with loans obtained under such statute. Upon execution and delivery of this instrument to a lender would proceedings taken and instruments executed and delivered by a liquidating agent which are ratified, adopted and authorized by said instrument be valid as the actions and instruments of the Superintendent of Banks himself? It is the general rule of law that an official cannot delegate discretionary duties. In view of the facts as stated in said instrument would the lender be secure in accepting said actions and instruments as the acts and instruments of the Superintendent of Banks himself?"

After receipt of your letter, you advised this office that what you desired most was an opinion as to the constitutionality of the Act as a whole. In accordance with your request we shall discuss the Act as a whole.

The Act you inquire about is found on pages 21 and 22 of the General Acts of the Legislature of Alabama, Extra Session, 1932. This Act authorizes the Superintendent of Banks of the State of Alabama to borrow and pledge the assets of a closed bank or trust company for the purpose of protecting and preserving its assets. The Act is short so we shall incorporate it in this opinion.

"Section 1.—That the Superintendent of Banks is authorized to borrow money and pledge the assets of a closed bank or Trust Company for protecting and preserving its assets, for paying secured claims for aiding in the reorganization or reopening of such bank or Trust Company and-or for making distribution to depositors and creditors, when in the judgment of the Superintendent of Banks, the borrowing of such funds would be to the interest of the depositors and creditors.

"Section 2.—That, for any loan negotiated under the authority vested by this Act, the Superintendent of Banks may execute note therefor, renew the same from time to time, and do all things he considers nec-

essary until the same has been paid. Such note or renewal, or any mortgage or contract, to be executed for the purpose hereof, shall be signed by giving the name of the bank followed by the words—"In liquidation", "By———(the name of the Superintendent of Banks) Superintendent of Banks of the State of Alabama." Any note or other contract executed for the purpose hereof shall be treated as the obligation of the bank and the holder thereof shall have the character of a creditor of the bank for the amount of any deficiency in the security furnished.

"Section 3.—That to secure any such note, the Superintendent of Banks may, with the approval of the Court having jurisdiction of the closed bank or Trust Company, pledge by appropriate contracts or writings, any or all of the assets in his hands belonging to the bank for whose benefit the loan shall be obtained. Before closing the proposal to procure the loan the same shall be presented to the Court by petition, giving the Court full information concerning the desirability of making the loan and such other matters as the Superintendent of Banks may desire, and the Court may pass upon such petition with or without notice to the officers of the bank involved or to other parties in interest, and if Court is not in session, the Judge thereof may approve the same in vacation.

"Section 4.—That all laws and part of laws in conflict with this Act be and the same are hereby repealed. But this Act shall be considered as cumulative, and shall not be construed so as to limit, modify or repeal any power or authority given the Superintendent of Banks by any other law. If any clause or Section of this Act shall be held to be unconstitutional it shall not affect any other Section or part hereof. This Act shall take effect upon its passage and approval by the Governor. Approved September 20, 1932."

It appears that the purpose of the Alabama Act is to provide authority for securing benefits under the Reconstruction Finance Corporation Act and Emergency Relief and Construction Act of 1932, enacted by the National Congress on January 22, 1932. It will be recalled that the old War Finance Corporation Act of Congress was amended and is now known as the Emergency Relief and Construction Act of 1932. Among other things the Emergency Relief and Construction Act of 1932 authorizes the Reconstruction Finance Corporation to loan money to Banks: "Including loans secured by the assets of any bank, saving bank, or building and loan association that is closed, or in process of liquidation, to aid in the reorganization or liquidation of such banks * * *." (Sec. 605, p. 63, United States Code Annotated, 1933, Cumulative Annual Pocket Part for Title 15). The Alabama statute was enacted for the purpose of giving authority to the Superintendent of Banks to ask for and receive the benefits of the Federal statute just alluded to.

In passing, we might state that the National Congress has recently passed several similar statutes authorizing loans to the Secretary of Agriculture

of the United States for the purpose of acquiring cotton, loans to Receivers of National Farm Loan Associations, loans to Farm Loan Commissioners, loans to Joint-Stock Land Banks, loans to Agricultural Improvement Districts, and loans to home owners. The Federal statute authorizing the Reconstruction Finance Corporation to make loans to closed banks falls in the same class of legislation.

You inquire, generally, whether the Legislature of the State of Alabama has authority to enact such a statute as is found on page 22 of the General Acts of Alabama of 1932, quoted above. You inquire whether the said statute offends any provision of our State Constitution or any provision of the Federal Constitution.

I have examined each and every part of the Alabama Act and have examined the Constitution of Alabama for the purpose of ascertaining whether any part of the Alabama Act offends any part of the Constitution of Alabama. The provisions of the Alabama Constitution on the subject of banks and banking, in my judgment, are not offended by any part of the Act of 1932.

I am of the opinion that there is nothing in the Constitution of the State of Alabama which would prevent the Legislature of Alabama from enacting such a law.

I find that this question has been discussed by the courts of other states, but not by the Supreme Court of the United States nor by the Supreme Court of Alabama. In the case of *Blades vs. Hood*, 164 S. E. Reporter, p. 828, the Supreme Court of North Carolina holds that the commissioner of banks, if authorized by a proper court, has authority to borrow money from the Federal Reconstruction Finance Corporation and pledge the assets of a closed bank for payment of the loan. The Federal statute involved in that case is the same Federal statute involved in this case, viz., the Federal Statute which authorizes loans to banks. In North Carolina there was no Statute authorizing the Commissioner of Banks to borrow the money and pledge the assets of the banks, as there is in Alabama. However, notwithstanding the absence of a statute authorizing the Commissioner of Banks to borrow the money and pledge the assets of the bank, the Supreme Court of North Carolina holds that the Commissioner of Banks, in charge of an insolvent bank exercises the functions of a chancery receiver in matters which are not inconsistent with the Commissioner's statutory duties. The North Carolina court holds that, through equitable principles, (in the absence of statutes specifically authorizing it), the Commissioner of Banks has authority, with the permission of the court in which the receivership is pending, to borrow money from the Reconstruction Finance Corporation and to pledge therefor the assets of the bank.

The same question was passed on by the Supreme Court of Utah in the case of *Riches v. Hadlock*, 15 Pac. Reporter, (2nd series) p. 283. In the Utah case the court holds that the Bank Commissioner taking possession of an insolvent bank is a mere creature of statute, distinguished from a chancery

receiver, and can exercise only powers conferred by statute, and no order of court applied for can be broader than the statute. The same Federal statute was involved in the Utah case as was involved in the North Carolina case and is involved in the Alabama statute. In the Utah case the Bank Commissioner applied for an order of court authorizing him to borrow money from the Reconstruction Finance Corporation for paying dividends to depositors and creditors and to pledge the bank's assets as security. The Commissioner of Banks proceeded on the theory that the court having jurisdiction over the closed bank was authorized by general equitable principles to authorize the Commissioner of Banks to borrow the money and to pledge the assets of the bank. There was no statute in the State of Utah authorizing the Commissioner of Banks to act, and only general principles of equity were relied on by the Commissioner of Banks. In the Utah case the court held directly contrary to the holding in the North Carolina case. In the Utah case the court held that the Bank Commissioner was a mere creature of statute, distinguished from a chancery receiver, while in the North Carolina case the court held that the receiver had all the powers of a chancery receiver, one of which was to borrow money for the benefit of the receivership. In the Utah case, the court takes a rather harsh view, holding that the Bank Commissioner, serving as a receiver of a closed bank (under and by virtue of statutes) had only that power conferred on him by the statutes.

The same question came before the Supreme Court of Connecticut in the case of *George J. Basset, Bank Commissioner v. The Merchant Trust Co.*, Vol. 115, Conn. Reports, 1933, p. 530. In the State of Connecticut the Legislature had not enacted a statute authorizing the borrowing of money from the Reconstruction Finance Corporation. In the Connecticut case the same Federal statute is involved. In the Connecticut case the court holds that a receiver has power by virtue of general equitable principles to make such orders in the receivership proceedings as the exigencies of the case may require, and that this power includes the power to authorize receivers to borrow money to carry on the business of the corporation, so, the Connecticut court authorizes the borrowing of the money, through equitable principles, there being no specific statute authorizing the borrowing of the money.

This question came before the Supreme Court of Washington in the case of liquidation of the Cashmere State Bank, 169 Washington Reports, p. 258. In the Washington case the same Federal statute was involved as was involved in the Connecticut, Utah and North Carolina cases. In the Washington case the same question was presented. In the Washington case, it was shown that the bank had no authority, by specific statute, authorizing the borrowing of this money from the Reconstruction Finance Corporation. In the Washington case the court holds that the State Supervisor of Banks acts in a governmental capacity, and represents the public in taking charge of an insolvent bank, and has discretionary power to do whatever may be necessary to carry out the ultimate purpose of the statutes, for conserving and distributing the assets, including the right and power to negotiate a loan from the Reconstruction Finance Corporation to pay preferred creditors, and to declare a dividend to depositors and general creditors; in the Washington

case the court holds that it is a matter of discretion with the State Supervisor of Banks. Both the Washington case and the North Carolina case mention the: "Emergency of the situation." In the Washington case there was no specific statutory authority as has been given in the State of Alabama.

This question came before the Supreme Court of Florida in the case of *Therrell v. Rinaman*, 144 Sou. Reporter, p. 327. In Florida there was no statute authorizing the borrowing of the money from the Reconstruction Finance Corporation. The Florida case holds that neither the State Comptroller nor his liquidator has any power respecting liquidation of insolvent banks except those conferred by statute, expressly or by necessary implication, or incident to express powers given; that neither the State Comptroller nor his liquidating agent is authorized to borrow money from the Reconstruction Finance Corporation and to pledge assets of banks. The Florida case follows the Utah case. Both the Florida case and the Washington case reach the conclusion that a receiver is without statutory authorization to borrow the money and pledge the assets to the bank. There was no statute authorizing this to be done either in Florida or Utah.

The Connecticut case, the North Carolina case and the Washington case authorize the borrowing of the money from the Reconstruction Finance Corporation, although there was not a statute authorizing the borrowing of the money. **There is a statute in the State of Alabama authorizing the Superintendent of Banks to borrow the money and to pledge the assets of the closed bank.** In the Washington case the Court holds that the Supervisor of Banks acts in a governmental capacity and has discretionary power to do whatever may be necessary to carry out the ultimate purpose of the statutes for conserving and distributing the assets, including the power to borrow money from the Reconstruction Finance Corporation and to pledge the assets of the bank. We do not think the powers of the Supervisor of Banks in Washington are any greater than the powers given our Superintendent of Banks in Alabama. We have compared the statutes of both states. In the Connecticut case, the court holds that general powers of equity authorize the receiver of a closed bank to borrow the money from the Reconstruction Finance Corporation, and to the same effect in the North Carolina case.

If we should follow the rule laid down in the North Carolina case and the Connecticut case or the Washington case we could easily hold that the Superintendent of Banks possesses the authority to borrow the money or that the court having jurisdiction over the closed bank would have authority to authorize the Superintendent of Banks to borrow the money.

It should be borne in mind that in neither the Washington case, the Connecticut case nor the North Carolina case had the Legislature authorized the borrowing of the money. It should be borne in mind also that in neither the Utah case nor the Florida case (both of which courts deny the right) had the Legislature authorized the borrowing of the money. In the matter before us, the Alabama Legislature has authorized the borrowing of the money.

In my judgment the Superintendent of Banks may legally proceed to borrow money and pledge the assets of a closed Bank, in the manner set out in the Alabama Act, for the purpose of paying secured creditors and for making distribution to depositors and creditors; it is my judgment that this is valid as against creditors and depositors whose debts or deposits were made prior to the enactment of said statute. It is my further judgment that any note or other contract executed for the purpose of carrying out the provisions of the Act must be treated as the obligation of the bank and that the holder of such note or other contract is a creditor of the bank for the amount of the deficiency in the security furnished.

While the Act provides that: “* * * and the court may pass upon such petition with or without notice to the officers of the bank involved or to other parties in interest* * *,” is an exercise of legislative discretion, it would appear that the better course would be to give notice to all parties of record. In the Connecticut case, *supra*, the Court points out that: “Any application for permission to negotiate such a loan should be heard only after notice to all parties of record, including creditors claiming a preference, if any, and the order authorizing the loan should set up the conditions surrounding it, and determine the method of repayment and the priorities to be accorded it as against the respective funds in the hands of the court for administration, so as to preserve the statutory rights of all parties in interest.” The Act provides that the court may approve the loan with or without notice. While it is true that insofar as a statute involves an exercise of the legislative discretion, there is no requirement that notice is essential to its validity, **we think the safer course to pursue is to give notice to all parties of record.**—*Goerge J. Bassett v. The Merchants Trust Company*, 115 Conn. 1, 530.... *Chicago R. Co. v. Hamilton County*, 182 Iowa, p. 60; *Hdw. Dealers Mutual Fire Ins. Co. v. Gliddens Co.*, 284 U. S. 151.

It is my judgment that a mortgage of real estate of the closed bank, executed by the Superintendent of Banks, under authority of the court, would be valid if executed either by an authorized agent as set out in Section 6309 of the Code of Alabama of 1923, or by the method prescribed in Section 2 of the Act under discussion. Section 4 of the Act provides that the Act is cumulative and is not intended to limit, modify or repeal any power or authority given the Superintendent of Banks by any other law.

It is my judgment that the Act in question authorizes the Superintendent of Banks to execute any note, mortgage or contract necessary to carry out the provisions of the Act. The Act specifically gives such authority to the Superintendent of Banks.

Section 3 of the Act does not mention an appeal. It is my judgment that it is within the discretion of the Legislature to provide an appeal, or to deny an appeal. Appeals are of statutory creation, and even though statutes

authorizing appeals are remedial and should be liberally construed, nevertheless authority for an appeal must be found in the statute.—Ex Parte 64 Sou. p. 960.

I have examined the power of attorney attached to the request and the certification for execution by the Superintendent of Banks, in connection with loans obtained under the Alabama statute. The banking laws of the State of Alabama specifically authorize the Superintendent of Banks to delegate this authority to a liquidating agent. It is my judgment that the lender would be secure in accepting the said actions and instruments as the acts and instruments of the Superintendent of Banks.

It is apparent that the Act is an emergency Act, for "protecting and preserving" the assets of closed banks and for "aiding in the reorganization or reopening of such banks." As pointed out by Mr. Chief Justice Hughes in the case of Home Building & Loan Association v. John H. Blaisdell, p. 225, United States Supreme Court Law Ed., Advance Opinions, 1933-34;

"A state, in the exercise of its police power, may give temporary relief from the enforcement of contracts when the urgent public need demanding such relief is produced by economic causes, as well as in the presence of disasters caused by fire, flood, or earthquake."

Block v. Hirsh, 256 U. S. 135; Marcus Brown Holding Co. v. Feldman 256 U. S. 170.

We respectfully invite your attention to the case of Home Building and Loan Association v. John H. Blaisdell, cited above, together with the authorities mentioned therein.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 15, 1934.

Hon. W. L. Stutts,
Judge of Probate.
Florence, Lauderdale County, Alabama.

Tax in lieu of road service fixed by Commissioners Court

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 6, 1934, in which you request my opinion as follows:

"May I know at once if there is any other way than by local legislation that persons of sound body and mind between the ages of 21 and 45 years may be relieved of road duty each year of six days of eight hours each or a fixed sum of money in lieu thereof set by Commissioners Court?"

Answering your request, I call your attention to Section 172 of an Act approved August 23, 1927 (General Acts 1927, p. 348) which is as follows:

"The courts of county commissioners, boards of revenue or Courts of like jurisdiction may accept a money compensation to be fixed by them, not to exceed ten dollars per capita per annum from those liable for road duty in lieu of the labor required by law upon public roads, and provide for the time of payment of the same. Said money to go into the road fund of said county, and be appropriated exclusively for the maintenance and improvement of the public roads of such county as hereinabove provided by Section 175."

It is my opinion that this gives your Commissioners Court the power to fix the amount to be paid in lieu of services to be rendered upon the roads of your County, at any amount they may deem fair and just not to exceed \$10.00 per capita per annum. But you have no power to relieve the person liable of both the duty and the tax without legislation.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General

February 20, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL

Interest received by the Probate Judge of Montgomery County on daily deposits of public and fiduciary funds should be credited to the various funds.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter enclosing letter from J. F. Kirk, Assistant Examiner of Accounts, in which he states:

"By an agreement in effect since 1926 interest has been paid to the Judge of Probate of Montgomery County by banks in which funds received by the Judge of Probate in his official capacity have been deposited, on the average balances on deposit of such funds.

"It appears to me that amounts thus received as interest belong to Montgomery County, and should be paid into the County Treasury, as by constitutional amendment and subsequently enacted laws the compensation of the Judge of Probate of Montgomery County is limited to the amounts therein stated, and all fees and commissions, etc., to which the Judge of Probate is entitled, when collected are payable into the County Treasury.

"Will you please advise me what disposition the Judge of Probate should make of such funds received by him?"

You ask me to advise you on the inquiry propounded by him.

In my opinion any interest received on such deposits should be credited to the various funds. The Probate Judge is paid on a salary basis.

Yours very truly,
TOMAS E. KNIGHT,
Attorney General.

February 27, 1934.

Hon. C. D. Wadsworth,
Tax Collector, Autauga County,
Prattville, Alabama.

Deputy Tax Assessor appointed by the State Tax Commission entitled to only one fee for making escape assessment even though such escape covers a period greater than one year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 23, 1933, in which you state:

"Mr. P. H. Harris, Deputy Tax Assessor, has sent to my office a number of tax assessments covering more than one year, all on one assessment sheet on which he charges a fee of 50 cents for each year.

"I am attaching you a copy of one of the assessments.

"Is Mr. P. H. Harris, Deputy Tax Assessor, entitled to a fee of 50 cents for each year?

"Since there is only one assessment, although it covers more than one year, it appears to me that Mr. Harris would be entitled to one fee only."

Section 3042 of the Code of 1923 provides in part as follows:

"For making the demand on the taxpayer for his list of property the Assessor shall be entitled to 50 cents."

Section 62, Acts 1919, page 282, provides in part as follows:

"The Assessor shall be entitled to the same fees for making returns of property which has escaped taxation as for making returns of property after demand made by him on the taxpayer."

Subsection (a) of Section 25A, Acts 1923, page 284, provides:

"Such Deputy Tax Assessors shall hold office only at the will of and shall be governed by rules and regulations prescribed by the State Tax Commission and shall have the same power and authority as County Tax Assessors in the performance of their duties in the assessment of personal property which has escaped taxation."

The authority for the Deputy Tax Assessor to collect a fee is necessarily limited to the authority given the regular County Tax Assessor.

It would appear from the above quoted Sections that only one fee is payable to the regular County Assessor.

I am, therefore, of the opinion that the Deputy Tax Assessor appointed by the State Tax Commission can collect but one fee for making the escape assessment even though the same should cover a period greater than one year.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Tax Collector's responsibility for receipts which are furnished him by the State Comptroller.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 25, 1934, in which you request my opinion as follows:

"Will you please advise whether or not a Tax Collector, where he issues a poll tax receipt to a taxpayer, and accepts in payment therefor a check, which check is afterwards not paid and the taxpayer still retains possession of the tax receipt, is liable to the State of Alabama for the amount of such poll tax receipt. Is not the Tax Collector liable for the face value of all poll tax receipts which he does not return to the Comptroller's Office?"

This office has held that all taxes, licenses, etc., are payable in money only and if the Tax Collector or any other agency of the State accepts any other payment than money he does so at his own risk, and must account to the constituted authorities be they State, County or Municipal for such collection

Biennial Report of Attorney General, 1928-1930, p. 687.

I do not think, however, this rule applies in its strictest sense to ad valorem taxes as it does to licenses and poll taxes as the Tax Collector can ignore the dishonored check and proceed to collect such taxes as if no payment had attempted to be made, and would not be liable for same unless he has by accepting such check, allowed such taxes to become insolvent or by his dereliction of duty permitted such taxes to become uncollectible.

Biennial Report of Attorney General 1930-1932, p. 194.

When the State Comptroller, under Section 3030, Code of Alabama, 1923, furnishes blank poll tax receipts to each Tax Collector of the State, said Tax Collector is charged with each receipt according to book and number and said collector is bound to account for same by either showing they have been used for receipting payment or otherwise properly accounting for same.—See Local Acts 1931, p. 166.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1934.

Hon. H. J. Rutherford, President,
Jury Board of Russell County,
Hurtsboro, Alabama.

1. It is the duty of the Jury Board to designate a safe place for the keeping of the jury box of the county.

2. Relative of member of Jury Board may serve as clerk.

3. It is within the discretion of the Jury Board as to the place where the Jury Roll of the county can be safely kept in the Courthouse.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 17, 1934 in which you ask an opinion on the following matters:

1. Is the Jury Board authorized to designate a place for the safe keeping of the jury Box of the County in the event the Jury Board is convinced that the vault in the office of the Judge of Probate does not provide a satisfactory and safe place for the keeping of the same?

2. Can the Jury Board select a relative to serve as Clerk of said Board?

3. Is it discretionary with the Jury Board to determine what place in the Courthouse in the County, the Jury Roll shall be kept in order to comply with Section 13 of the Act approved February 20th, 1931 creating Jury Boards for the several counties of the State.

I am of the opinion that in view of the manifest purpose of Section 13 of Act No. 47, H. B. 70 (General Acts, 1931, page 55) to provide means whereby the jury boxes of the several counties of this state shall be kept free from molestation by persons wholly unauthorized to deal with same, that if the jury board of the county is of the opinion that the vault in the office of the Judge of Probate is insecure or unsafe, that they are authorized to place the jury box in some other safe or vault in the Courthouse, which in their opinion is safe and secure. I am aware of the fact that said Section 13 provides that the cards upon which appear the names, addresses, and occupations of those persons who have been selected to serve as jurors shall be placed in a substantial metal box provided with a lock and two keys which box shall be kept in a safe or vault in the office of the Judge of Probate and if there be none in that office, the Jury Board shall deposit it in any safe or vault in the Courthouse to be designated on the minutes of the Board. I am of the opinion that if there is a safe in the office of the Judge of Probate, which is kept locked and to which no one has access except the Judge

of Probate or his assistants, that the jury box must be kept therein but I do not think it was the intention of the Legislature that said box should be kept in the vault where the various books and records of the county are kept which is open at all times to the public.

In answer to your second question, I know of no law which forbids the Jury Board to select as the Clerk of said Board a relative of one or more members of the Board.

In answer to your third question, I am of the opinion that the place where the jury roll shall be kept is within the discretion of the Jury Board of the County Section 13, supra, provides that the jury roll shall be kept securely and for the use of the Jury Board exclusively and that it shall not be inspected by anyone except the members of the Board or by the Clerk of the Board upon the authority of the Board unless under an order of the judge of the Circuit or other Court of record having jurisdiction. Of course, this provision makes it mandatory upon said Board to select a safe and secure place for the deposit of said jury roll.

The law under discussion, to my mind, shows a clear intention and purpose on the part of the Legislature to provide means by which the juries of this state shall be fairly and justly drawn and to prevent any outside interference.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1934.

Hon. James H. Hard, Jr.,
State Comptroller,
CAPITOL.

Notice as to registration of voters.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 5, 1934, in which you request my opinion as follows:

"Will you please refer to an Act of the Legislature 1927, page 274, and the last sentence on said page and advise whether or not notice is required by law to be given by publication for this session of the Board which under the law is required to meet at the Court House on the

fourth Monday in January 1928, and each two years thereafter, and to remain in session ten working days for the registration of voters.

"Incident to this, I have before me your opinion which was rendered W. A. Webb, Chairman of the Board of Registrars, Macon County, January 1934, but this opinion has reference to the publication of notices with regard to the session of the Board of Registrars and in which they visit each precinct, between October 31, and December 31, 1927 and each two years thereafter, and also to Session of the Board held for special registration.

"As the session which is fixed by law is to be held on the fourth Monday in January 1928, and each two years thereafter in each County, is absolutely fixed and as no provision of law is made for publication of notice of this session, it occurs to me that in the absence of law for the publication of this notice, that the Legislature considered that there was no necessity for giving notice of a session which was absolutely fixed as to time of the beginning, and as to the continuance of session and as to the place, and the same being absolutely fixed by law in the absence of specific requirement for publication, no publication is required, and not being required, there would be no authority of law for the State to pay for such publication.

"Please advise whether published notice of session held fourth Monday of January is required."

I note that my opinion of January 3, 1934, to Mr. W. A. Webb, Chairman of the Board of Registrars of Macon County, construes the law pertaining to special registration as provided by an Act approved October 4, 1932 (General Acts 1932, Special Session, p. 67) and what I said in this opinion is correct where special registration is held under this section by order of the Commissioners Court, but where the registration is held under Section 375, Code of Alabama, 1923, as amended by an Act of the Legislature approved August 25, 1927, where said Act provides as follows: "... The board of registration in each county shall meet at the court house on the fourth Monday in January, 1928, and each two years thereafter and shall remain in session ten working days for the registration of votes," notice does not have to be given for the reason that the time of meeting is fixed by law.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 5, 1934.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Depts.,
The State Tax Commission,
CAPITOL.

Drivers employed by C. W. A. organization to drive trucks owned or leased by it and used purely for its own purposes held not liable for chauffeur's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter requesting me to advise you as to the liability for chauffeur's license of the drivers of the trucks under the following statement of facts:

"At Elba, Ala., the Government is building a levee under the supervision of the C.W.A. organization. The C.W.A. organization is hiring 30 dump trucks to be used in hauling dirt on the levee and is paying the price of \$1.25 per hour for the use of these trucks. The owner of the truck furnishes the oil and gas as well as the upkeep of the truck. Each truck is used eight or ten hours per day for six days in each week and all the work is done at Elba, Ala.

"The C.W.A. organization also hires the drivers for these trucks and two men are assigned for each truck. The drivers work under the direct supervision of the C.W.A. and there is no connection between the owner of the truck and the driver, except that the owner has the privilege of picking a driver from the C.W.A. forces if he wishes to do so. Some of the C.W.A. workers who drive these trucks also own the truck which they drive, but they do not drive the truck as their own while on the job.

"Should the owner of these trucks be required to buy a chauffeur's license for the truck or for each driver of the truck? Or should each driver of these trucks be required to buy a chauffeur's license? Has the State of Alabama the right to require a chauffeur's license of these working for the C.W.A.?

"It is agreed that these trucks travel the State highways in doing this work on the levee."

In answer I advise that in my opinion no such license is required. The facts appear to be within the exception found in Section 25, Acts 1923, page 292, excepting the drivers of motor vehicles used for private purposes.

City of Montgomery v. Orpheum Taxi Co., 203 Ala. 103: Biennial Report of Attorney General, 1926-1928. p. 155;

Biennial Report of Attorney General, 1930-1932, p. 411.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

March 5, 1934.

Hon. Geo. G. Wallace, Jr.,
Tax Collector, Russell County,
Girard, Alabama.

Where taxpayer appeals from an assessment upon the determination of the cause, interest should be collected from the date which such taxes would have been delinquent, if no appeal had been taken.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date in which you state:

"The Board of Review of Russell County assessed certain property for 1932 taxes at their regular meeting in 1932. The owner objected to this assessment and appealed to the Circuit Court, which met in January, 1934, and adjusted said claims.

"Question: Should interest on said taxes be applied from January 1, 1933, or from the date of the Circuit Court's decision, which was Jan. 8, 1934."

In answer to your inquiry I advise that in my opinion interest should be included from January 1, 1933, unless the judgment of the Court recites to the contrary.

Section 61, Acts 1923, page 152, provides in part as follows:

"Provided, however, that no appeal shall suspend the right of the State and counties to collect from the taxpayer the taxes due upon his property as fixed for the preceding tax year, and the taxpayer shall, when the taxes are due, pay all taxes due at the assessed value of the preceding year."

If the taxpayer had done this no question of interest would have arisen, and if upon the final determination of the appealed case if he had been entitled to any refund, the same would have been authorized under Acts 1927, page 635.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 5, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Judge of any Court in Alabama is without power to set a fine for a criminal offense at a lesser amount than that fixed by law.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 12, 1933, in which you request my opinion as follows:

"In the trial of cases in a County Court where defendants were charged with the offense of Driving a Car While Intoxicated, the fine in each case is fixed by law at not less than \$100.00, and the Judge in trying the case adjudges the defendant as guilty, and assesses a fine of \$50.00.

"The Judge not being under bond, is the Clerk of the Court liable in receiving the fine and costs in the case, for the difference between the amount of fine fixed by law and the amount fixed by the decision of the court?

"One of the Examiners of Accounts in checking the affairs of a County Court finds that the Judge of said Court, without regard to the fine fixed by law, arbitrarily, in his judgments of guilty, fixes the fine at a less amount than provided by the statute."

My answer to your inquiry is in the negative. The Clerk can do nothing more nor less than carry out the orders of the Court, and he must follow the bench notes of the Judge. He does not himself act in a judicial capacity and has nothing to do with the fixing of the fines.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 5, 1934.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Section 91, School Code of 1927; meetings of Board of Education as provided in said section must be held.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of February 15, 1934 in which you request an opinion of this office as to whether or not Section 91 of the Alabama School Code of 1927 makes it mandatory upon the County Boards of Education to hold meetings on the last Friday in the months of November, February, May and September.

Section 91, *supra*, reads as follows:

91. The County Board of Education shall hold an annual meeting each year on the last Friday in November. At this meeting the Board shall elect each year one of its members to serve as president and one to serve as vice-president. Other regular meetings shall be held on the last Friday of February, May and September, and such special meetings may be held, and at such place as the duties and the business of the Board may require. The rules generally adopted by deliberate bodies for their government shall be observed by the County Board of Education. No motion or resolution shall be declared adopted without the concurrence of the majority of the whole Board.

It is my opinion that the above quoted section expressly requires the County Board of Education to hold at least four meetings during the year, the meetings to be held on the dates set out in said section. It appears to the writer that no other construction can be placed on said section in view of the fact that after stating that regular meetings shall be held on certain dates there is a provision for the calling of special meetings if the duties and business of the board may require.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 5, 1934.

Hon. S. W. H. Williams,
County Solicitor,
Greensboro, Hale County, Alabama.

Road apportioner: No provision for.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of February 12, 1934, which is as follows:

The Commissioners Court is in session at this time and has requested me as County Solicitor to ascertain whether or not, it is necessary for said Court to appoint a ROAD APPORTIONER for each precinct of Hale County, Alabama; and whether or not it is mandatory upon said Court to appoint such an apportioner when the county has a road supervisor who is performing all of the duties incumbent upon such apportioner.

This court feels that it is an expense upon the county, which can be saved, and has requested that I procure from the Attorney General's office an opinion on this matter at the earliest possible time. And I shall thank you to furnish me with such an opinion, if possible within the next few days.

The last provision of law for the appointment of so-called road apportioners appears in the Code of 1907, wherein Section 5780 provides for the appointment by the Court of County Commissioners of road apportioners for each election precinct within the county. Act No. 505, House Bill 1449, General Acts of the Legislature of 1915, revised the existing laws in regard to the supervision of roads, bridges and ferries of the several counties of the State. This Act did not specifically repeal sections of the 1907 Code dealing with road apportioners, but said provisions are omitted from the Code of 1923.

The laws governing the establishment and maintenance of public roads, bridges and ferries are now found in Article 2, Chapter 32, Code of Alabama, 1923, Vol. 1. I also refer you to Article 4 of Act No. 347, House Bill 391, General Acts of 1927, page 348.

Michie's Code of Alabama, 1928, Section 1397 (117) provides as follows:

1397 (117) Persons liable to road duty.—All persons are liable to work on the public roads, except those exempt by the succeeding section. Three days notice in writing shall be given to the person liable for road duty by the **overseer, or some authorized person**, and the notice shall state the date, time, and place of meeting where such person shall

report for duty, and shall be served upon such person or left at his residence which shall constitute a legal notice.

In view of the above provisions of law, I am of the opinion that the Courts of County Commissioners are not compelled to appoint road apportioners for each precinct in the county.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 6, 1934.

Hon. S. D. McGee,
Tax Collector, Tuscaloosa County,
Tuscaloosa, Alabama.

1. Tax Collector should pay to the Tax Assessor the full amount of the fees and commissions earned by the Tax Assessor.

2. Where the Tax Assessor has actually earned fees and compensation prior to the adoption of the Sparks Amendment, to-wit, September 1, 1933, which are not payable until after the adoption of such amendment, then such Tax Assessor should be paid the full amount of his fees and commissions earned prior to the adoption of said Constitutional Amendment. Said amendment does not operate to reduce or affect fees or compensation earned prior to its adoption.

3. Said amendment after its adoption allows the Tax Assessor, Collector, or other officer a net compensation of \$6,000.00.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date in which you state:

"Constitutional Amendment No. 1 which seems to have been ratified by a vote of the people of Alabama on yesterday has the following provision in it:

" 'Provided that from and after the first day of the month next succeeding the date of the ratification and adoption of this Amendment no salary, compensation, fees or commissions paid to any officer under the State or any county or municipality thereof, shall exceed the sum of \$6,000 per annum'

"The Tax Assessor of this County under existing laws is due to be paid by me for the assessments made by him. He has paid during each year for the assessments made by him during the previous tax year. He employs more than \$3000 worth of help each year in assessing the taxes of this County. At the present time he is collecting from me fees for assessments made by him after October 1, 1931. Beginning October 1, 1933, he will be collecting from me from time to time fees and commissions which are due him for taxes assessed by him on and after October 1, 1932. Under these conditions I would like to have you answer the following questions for me.

"1. When he has collected from me after August 1, 1933, on his fees for work done by him and his employees during the years of 1931 and 1932, the total sum of \$6000, will he also be entitled to collect from me an additional amount, if such there should be, due him as fees and commissions?

"2. Will he be entitled to collect from me all the fees and commissions provided by law to be paid to him for assessments he has made prior to August 1, 1933?

"3. Is he entitled to collect from me more than \$6000 a year beginning August 1, 1933?

"4. Is he entitled to collect from me after October 1, 1934, in addition to \$6000 a year, enough to pay his employees?

"5. Does the \$6000 per annum limit provided for in the Constitutional Amendment above referred to apply to fees and commissions paid by me to the Assessor on and after August 1, 1933, for assessments made by him prior to that date? If so, is it my duty to pay him in addition thereto fees and commissions so earned by him sufficient to pay his employees?

"6. Is it my duty under the Constitutional Amendment above referred to to pay all fees and commissions to the Tax Assessor now provided by law?

"As I collect the taxes from time to time, I take out the fees and commissions due me under existing laws for my work, I also employ two employees to assist me in collecting the taxes and keeping records. You will notice that as I collect the taxes I pay to the Assessor the fees and commissions due him for work that he and his employees did the previous year, but the fees and commissions which are retained by me are for collections made by me and my employees during the present year. Under these conditions I would like to have you give me your opinion on the following questions:

"1. Will I be entitled to retain enough to pay my employees over and above the \$6000 limit provided for in the Amendment?"

"2. Will this Constitutional Limitation be operative on and after August 1, 1933, without any additional legislation pertaining thereto?"

"3. If I should find that it is impossible to collect the taxes of this County without hiring \$6000 worth of help each year, will I be required to do the work without receiving any additional compensation over and above the amount that it takes to pay my employees?"

"4. How will my compensation be affected by this Constitutional limitation of \$6000 per annum beginning August 1, 1933?"

With reference to the Tax Assessor I advise you as to your various inquiries as follows:

The Amendment known as the Sparks Amendment went into effect September 1st. Therefore, your question referring to August 1, 1933, will apply to September 1, 1933.

Question 1 is answered in the affirmative.

Question 2 is likewise in the affirmative.

Answering question 3 I advise that you should pay the Assessor whatever fees and commissions he may be entitled to.

My answer to question 4 is in the affirmative.

In answer to question 5 it is my opinion that the \$6000 per annum limit provided for in the Constitutional Amendment does not apply to fees and commissions which have been actually earned by the Tax Assessor prior to September 1, 1933. While you will not pay the Tax Assessor these fees until after October 1, 1934, it is my opinion that the Amendment does not apply to fees and commissions which were earned prior to the adoption of such amendment but that the Assessor is entitled to be paid the full amount of his fees and commissions actually earned prior to the adoption of the Amendment even though the payment is made thereafter.

Answering question 6, it is my opinion that it is your duty annually to pay the Tax Assessor whatever fees are earned by him.

With reference to your questions relating to the office of Tax Collector, I advise that in my opinion the \$6000 limit means \$6000 net and that you are entitled to retain a sufficient amount to pay the reasonable expenses of your office in excess of that.

Answering question 2 I advise that in my opinion the Constitutional Amendment is self executing and requires no additional legislation after the date of its adoption, to-wit, September 1, 1933.

Answering questions 3 and 4 together, I advise that the Constitutional Amendment allows you the salary of \$6000 net to you, if the fees and compensation equal that amount. If such fees and compensation exceed this amount, then the excess can be applied toward the payment of the reasonable expenses of the office. If after paying the reasonable expenses of the office and \$6000 salary net to you, there should be any excess, it is my opinion that the same should be paid into the County Treasury. Of course if the income from the office is insufficient to permit you to employ sufficient help and at the same time receive a net salary of \$6000, any deficiency will pro tanto affect the net compensation received by you.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 6, 1934.

Hon. James H. Hard, Jr.,
State Comptroller,
CAPITOL.

Costs—Retaxation—Effect of on Court and Clerk.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 2, 1934 in which you enclose a letter from Mr. M. P. Singleton, Examiner of Accounts, wherein the following inquiries are presented.

“Question No. 1. On criminal cases appealed from a City or Municipal Court to the State Circuit Court must the Circuit Court Clerk tax as part of the costs in his court a State Solicitor’s fee, whether or not prosecuted in the State Court by the City or the State Solicitor?

“Question No. 2. Where a case was appealed from the city to the Circuit Court does taxing of a Solicitor’s fee upon conviction in the Circuit Court depend on whether defendant was tried in the City Court for violation of a City Ordinance or tried there for violation of a State Law?

“Question No. 3. If a defendant tried for violation of a City Ordinance appeals his case from the City Court to the Circuit Court and is found guilty in the State Court has the Circuit Judge the authority

to fine said defendant and to then retax the costs eliminating the State Trial Tax, the Circuit Clerk's and the Sheriff's fees?

"Question No. 4. If the Circuit Judge does not have the authority to retax costs in criminal cases except as provided in Section No. 7247 of the 1923 Code, what responsibility for accepting an order to the effect set out in question No. 3 rests upon the Circuit Court Clerk?

"Question No. 5. Can a Circuit Judge retax costs and give a defendant credit off for time spent in jail awaiting trial where defendant is presently tried and convicted and in lieu of payment of a fine and costs, he is sentenced to hard labor for the county?

"Question No. 6. Just what specific authority does a Circuit Judge have as to retaxing of costs in criminal cases?

"Question No. 7. Is the Circuit Court Clerk liable on his bond for failing to tax a case, upon conviction, all the costs that are provided by law when such failure caused a loss of costs due the State or County, regardless of the Circuit Judge's order to the contrary? (I am aware of the Attorney General's ruling holding a Clerk liable for failure to tax all costs in State hard labor cases)"

For convenience your first and second inquiries will be answered together. If the defendant was prosecuted in the Municipal Court for the violation of a State statute and on conviction an appeal was taken to the Circuit Court and he was there convicted, the solicitor's fee would be chargeable in the Circuit Court. On the other hand, if the defendant was prosecuted in a Municipal Court for violation of a city ordinance and an appeal was taken from this conviction to the Circuit Court and conviction was had in the Circuit Court there would be no solicitor's fee chargeable for the reason the solicitor of the Circuit Court or county solicitor is not charged with the duty of prosecuting such cases.

For convenience your third and fourth inquiries will be answered together. In my opinion a judge would be without authority of law to retax such cost as this cost is a fixed charge, but in case he should do so the clerk is compelled to follow the order of the court in making such retaxation. If the Court is in error in making such order the Clerk of the Court only acts in a ministerial capacity and cannot exercise any judicial authority and must follow the orders of the Court. If the Court is in error those aggrieved have a remedy by appeal or mandamus.

In answer to your fifth inquiry, wish to state that the matter contained therein is entirely within the discretion of the trial court.

In answer to your sixth inquiry, I am of the opinion that ordinarily the court loses all power over its judgments under Section 6670, Code of Alabama, 1923, after thirty days, but should it even after this time retax the costs the clerk is bound by such retaxation for the reasons set out above. However, under Section 7855, clerical errors may be corrected within three years.

I am of the opinion that your seventh inquiry should be answered in the negative. What has been said heretofore applies to this specific inquiry. The clerk acts ministerially and must follow the court's orders even though the court is in error.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 7, 1934

Hon. Lacey Edmundson,
Deputy Tax Assessor,
Birmingham, Alabama.

Fixtures to apartment houses should be taxed as real property.

Opinion by the Attorney General.

Dear Sir:

I have copy of an opinion addressed to Mr. R. L. McAdory, Deputy Tax Assessor, by Hon. R. N. Cabaniss under date of February 5, 1931. It seems that Mr. McAdory inquired whether or not refrigerators, gas stoves, beds such as Murphy beds in apartment houses, owned and furnished by the owner of the building are personal property when considered for purposes of taxation.

I am of the opinion that such property should be assessed as real property. Of course, whether or not these articles of furniture ordinarily conceived of as personal property are fixtures is to be determined by the facts in each particular case to a great extent. However, applying my common knowledge to apartment houses I am of the opinion that such articles are usually so annexed to the realty that the same are fixtures. As a matter of fact, I think the character of the business of leasing furnished apartments or apartments furnished to that extent, evidence an intention of the owner to annex the same to the realty, thereby making the same a fixture.

I am in accord with the views expressed in Mr. Cabaniss' opinion of the date above mentioned, but, of course, I can conceive of instances where articles of furniture in furnished apartments could have been so placed by the owner and so used by the owner as not to become a fixture to the particular piece of property.

The circumstances in such cases, of course, must control.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 7, 1934

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department
State Tax Commission,
CAPITOL.

1. Under Act No. 192 approved April 20, 1933, securities may be registered for the then current tax assessing year, and future years and not for previous years.

2. Securities brought into the State after October 1st and before the Tax Assessor completes his assessment may be registered in the same manner and on the same basis as securities within the State on October 1st.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you request my opinion on certain parts of the Registration of Securities Act of 1927 as amended by Acts 1933, page 208.

I quote and answer your letter in the order of each inquiry:

We find it necessary to ask your formal opinion as to the interpretation of certain provisions of the law relating to the registration or record of ownership of securities which was originally enacted as Sections 44-52 of House Bill 359, approved July 22, 1927, and as amended by House Bill 242, approved April 20, 1933. Section 51 of the 1927 Act, as amended by the 1933 Act provides, among other things ' . . . provided a list of all securities may be filed and recorded annually and the tax paid as above provided for each year . . . (d) There shall be no ad valorem tax assessed or collected upon any security included in any list on account of which the tax prescribed by this Act shall have been paid, either State, County or municipal, for the year in which listed, provided however, that if said securities are not listed for any tax year and the privilege or license tax paid as herein provided, the same shall be considered as escape personal property and subject to the ad valorem taxes, laws and penalties relating to personal property which has escaped taxation and the Tax Assessor or Deputy Tax Assessor of the County wherein the owner of such securities resides, shall assess the same as escaped personal property is assessed, and notify the State Tax Commission that such assessment has been made and for what years the same has been made, and the State Tax Commission shall not thereafter accept the same for listing for the years for which it has been so assessed for taxation.'

"It is apparent that the law intended for the securities to be registered within the tax year for which the taxpayer sought exemption, but we have had numerous parties insist that we accept the lists during the cur-

rent year showing registration for previous tax years. The question is, can this Commission accept securities for registration during one tax year and show the registration to be as of a previous tax year. If you state that the Commission can accept securities in one tax year showing the registration as of a previous tax year, would the registration exempt the securities from ad valorem taxes for any tax year prior to 'the year in which listed?'

I am of the opinion that the amendment of 1933 applies to registration for the then current and future years and does not authorize registration for previous years. The amendment of April 20, 1933, superseded Section 51 of the 1927 Act which allowed ad valorem exemption for securities registered thereunder for the year listed **and for previous years.** The 1933 amendment allows exemption only for the **"year in which listed."** Two conclusions therefore seem apparent: First, that after the passage of the 1933 amendment registration must be under it and not under the 1927 Act, and second, irrespective of the Act under which registered or irrespective of the years for which registered, the exemption from ad valorem tax can apply only to the "year in which listed." This being true, there would be no advantage or point to registration for previous years, and the conclusion follows that the Legislature did not intend any registration under the 1933 Act except for the then current and future years.

Therefore, a holder of securities who did not prior to April 30, 1933, register his securities, cannot thereafter register them and secure exemption from ad valorem taxes for years prior to the tax assessing year beginning October 1, 1932.

You further state:

Section 45 of the Act provides that any owner may list his securities 'as of the first day of October, 1927, and thereafter as to securities subsequently acquired from time to time as of the first day of October next following the date of acquisition . . . ' The General Revenue Law (Section 5, page 282, Acts of 1919, subsection 'N') provides 'All property brought into the State after the first day of October and before the Assessor has completed his assessment, shall be subject to taxation the same as if it had been held or owned in the State on the first day of October.

It appears that the Legislature, in providing for registration of securities, made no provision for the registration of securities which were brought into the State after October 1st of any tax year and before the Tax Assessor had closed his books, and it further appears that the Legislature made no provision for exempting those securities from advalorem taxes. In other words, the two above quoted sections of the law seem to have a separate field of operation without conflict, but at the same time there seems to be no provision for the registration of securities purchased by any taxpayer after October 1st and before the Tax Assessor closes his books, until the October following date of acquisition. The question is,

would securities which are brought into the State of Alabama after the first day of October in any tax year and before the Tax Assessor has closed his books for assessment be subject to ad valorem taxes, or could the owner of such securities register same with the Tax Commission and obtain exemption from ad valorem taxes for the year in which such securities are brought into the State?

It would appear that the Legislature failed by specific language to provide for the registration of securities brought into the State after October 1st and before the Tax Assessor completes his assessment.

However, I am of the opinion that the intent of the Legislature must be ascertained by so construing the statute to promote reasonableness and conformity with our general tax system.

The tax year runs from October 1st through September 30th following.

Property generally is assessable as of October 1st.

Any securities in the State as of October 1st may be listed and be exempted from assessment for and payment of advalorem taxes

To prevent fraud and promote equalization, the statute makes property brought into the State after October 1st and before the Tax Assessor completes his assessment, assessable in the same manner as if in the State on October 1st. The effect of this statute is to make property so brought into the State of the same taxable class as that within the State on October 1st, and subject to the same taxation. So far as ad valorem taxation is concerned, it is subject to the same burdens as property in the State on October 1st.

If it bears the burdens, then it is reasonable to assume the Legislature did not intend to discriminate against it, in the matter of benefits. If it is the same taxable class in one instance, it is reasonable to assume that the Legislature intended it to be in the other.

Apart from registration, securities in the State on October 1st are subject to ad valorem assessment as of October 1st.

Securities brought into the State after October 1st are in like manner subject to ad valorem assessment and for the same assessing year, to-wit: that beginning October 1st.

Securities within the State on October 1st may be registered as of that date and be exempt from ad valorem tax "for the year in which listed," meaning of course taxable year.

It would therefore appear that securities brought into the State after October 1st being assessable for the same taxable year, can be registered for such year and be exempt from ad valorem tax "for the year in which listed."

While the statute could be clearer, from a consideration of the whole subject, I cannot believe that the Legislature intended for a taxpayer who owned a security on October 1st to pay 25 cents on the hundred dollars, and require a taxpayer who acquired a security on October 2nd, to pay the ad valorem rate ranging from \$2.00 to \$3.90 on each \$100.00.

I therefore advise that securities brought into the State after October 1st and before the Assessor completes his assessment, are subject to registration in the same manner and on the same basis as securities within the State on October 1st, and when so listed are exempt from ad valorem taxes "for the year in which listed."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 9, 1934

Hon. Luther E. Little,
County Superintendent of Education,
Clanton, Alabama.

School—Use of district tax for building purposes.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 14, 1934 in which you state the following facts:

The County Board of Chilton County has provided in its budget for the year 1933-34 from the district three mill tax of District A an item of \$10,000.00 for the purpose of building and repairing school houses in said district. The building and repair work extends over an extensive area, in fact, it covers practically the entire county. This work is not being done on contract basis, hence the County Board of Education must see that materials, etc. are constantly checked on these jobs. Under authority of Section 137, School Code of 1927 the County Board of Education is contemplating the rental of an automobile, said rental to be paid out of said three mill district tax of the district in which the building is to be done. The rental of said automobile is to be authorized by an official resolution spread on the minutes of the Board of Education. This rental is absolutely essential to the interest of the County Board of Education in the program of construction now under way. By this means, an efficient employee can assure the County Board of Education there is no waste in the building program.

In view of the above you request my opinion as to whether or not the rental of the automobile in question would be a legal expenditure of said fund under authority of section 137, School Code of Alabama, 1927.

I am of the opinion that your inquiry should be answered in the affirmative, provided that the rental of the said automobile is essential to the most efficient and economical administration of the construction program in question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 12, 1934

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Clay County, Alabama.

Courts of County Commissioners—Appropriations for relief of storm sufferers.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 12, 1934, in which you request my opinion as to whether or not the Court of County Commissioners can appropriate the sum of \$250.00 into the general relief fund for storm sufferers whose homes and personal belongings were recently destroyed by storms.

I am of the opinion that your inquiry should be answered in the affirmative. Subsection 6 of Section 6755, Code of Alabama 1923, as amended by Acts 1931, page 759, authorizes the Courts of County Commissioners to make such rules and regulations for the support of the poor in the county as is not inconsistent with any law of the State. This provision, in my opinion, is sufficiently broad to authorize the expenditure in question.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1934

Hon. R. B. Ford,
Sheriff, Randolph County,
Wetowee, Alabama.

S. B. No. 112, approved April 20, 1933, (General Acts, Special Session, 1933, p. 200) amends only Section 4659, Code of Alabama, 1923, and does not affect Section 4626, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 1, 1934, in which you request my opinion as follows:

"Section 4626, Code of Alabama, 1923, entitles the sheriff or other person obtaining a conviction for the manufacture of alcoholic or other prohibited beverages a fee in the sum of \$50.00; this section specifically deals with the question of the manufacture or making of whiskey.

Section 4659, Code of Alabama, 1923 also deals with a \$50.00 fee to the sheriff or other person obtaining the conviction for the possession of a still or like apparatus or device.

S. B. 112, Acts of 1933, amends Section 4659, Code of Alabama, 1923 and deals with Section 4656 and Section 4657.

Said S. B. 112 does not deal in any way with the aforesaid Section 4626, Code of Alabama, 1923.

QUESTION: Is the sheriff or other party securing the conviction for the manufacture of whiskey or prohibited beverages entitled to this fee of \$50.00 under Section 4626, Code of Alabama, 1923, now. Does S. B. 112 have any connection in any way with Section 4626, Code of Alabama, 1923?

QUESTION: Under the certificates already filed by the sheriffs or other persons securing convictions for the manufacture of whiskey and where said certificates have been cut down by the Comptroller to \$35.00 and other requirements of S. B. 112, Acts 1933, have been complied with, was this not error and not in conformity with the mandates of Section 4626, Code of Alabama, 1923?

QUESTION: Does S. B. 112, Acts of 1933, in any way appertain to Section 4626, Code of Alabama, 1923?

The Act which you refer to does not in anywise repeal or amend Section 4626, Code of Alabama, 1923, which is as follows:

4626. Fifty dollars allowed sheriff or officer furnishing evidence to support conviction taxed as costs.—Whenever any person is convicted in the circuit court of unlawfully distilling or manufacturing or making any of the prohibited liquors or beverages as defined by this Code, there shall be charged in the bill of costs to be paid and collected as other items of cost, the sum of fifty dollars, to be allowed the sheriff or other officer or person who furnished the evidence and brought about the conviction, and who shall satisfy the presiding judge that he is the person entitled to said sum, and shall receive from the judge a certificate to that effect.”

The Act you refer to is S. B. No. 112, approved April 20, 1933 (General Acts Special Session, 1933, p. 200) and amends only Section 4659, Code of Alabama, 1923, and has no effect on Section 4626, *supra*.

My answer to your second inquiry is in the affirmative.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 22, 1934

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

Counties—Maintenance and construction of roads within incorporated municipality in conjunction with CWA.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 20, 1934, in which you request my opinion as follows:

1. Can the Court of County Commissioners join the CWA in the establishment of a road or street within the incorporated limits of a municipality where the State Highway Commission has no jurisdiction over said road or street and pay part of the costs of same out of the gasoline tax.

2. If your answer to the first inquiry is in the affirmative, can same be done without letting a contract for said work, in other words, can the County and the CWA do the work without letting a contract?

I am of the opinion that your first inquiry should be answered in the affirmative in both respects, provided you have the approval and permission of the municipality in question.

Under Section 175 of the Alabama Highway Code of 1927 (Acts 1927, page 396) a Court of County Commissioners may, with the approval of the municipality, establish, construct or maintain any road, street or bridge within incorporated limits of such municipality, except in cases where the State Highway Commission has jurisdiction over such road, street or bridge.—**Opinions Attorney General.** Book 15, page 158, (off. Ed.)

Under Section 1347, Code of Alabama, 1923, as brought forward as Section 157 of the Alabama Highway Code of 1927, *supra*, Courts of County Commissioners, Board of Revenue or other like governing bodies of the counties were given legislative, judicial and executive powers as regards maintenance and construction of public roads, bridges, and ferries in their respective counties.

The road or street in question is one over which the Court of County Commissioners may have jurisdiction with the approval and permission of the municipality in question. The Court of County Commissioners may exercise legislative, judicial and executive powers over the public roads under their jurisdiction. The premises considered, I am of the opinion that the Court of County Commissioners may join the CWA in the establishment and construction of the road or street in question, provided the approval and permission of said municipality is secured.

The 1931 Session of the Legislature authorized the gasoline tax to be used for the construction and maintenance of the public roads and bridges of a county, (Acts 1931, page 859). When the road under consideration comes under the jurisdiction of the County, I am of the opinion that the gasoline tax may be expended for the establishment and construction of the same.

I am of the opinion that your second inquiry should be answered in the affirmative. Section 1347, Code of Alabama, 1923, as carried forward in the Alabama Highway Code, *supra*, confers on all Courts of County Commissioners or other like County governing bodies extensive powers and jurisdiction relative to maintenance and construction of roads, bridges and ferries of their respective counties. Such being the case, it is my opinion that the work may be done in the manner deemed most expedient by those vested with the authority in question.—Biennial Report of Attorney General, 1930-1932, page 916.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 21, 1934

Hon. Pete B. Jarman,
Secretary of State,
CAPITOL.

1. Senators, Representatives, Members of State Executive Committee, State officers under 1931 Primary Act and Corrupt Practice Act.

2. Must file declaration of candidacy with Secretary of State.

Opinion by Assistant Attorney General Lawson.

Dear Sir.

I have your letter of March 15, 1934 in which you request my opinion on the following matters:

1. Are the Senators, Members of the Legislature, and Members of the Democratic Executive Committee qualified as State Officers?

2. If these officers are qualified as State Officers shall they file a declaration with the Secretary of State, Chairman of the State Executive Committee and with the Judge of Probate?

3. If a party qualifies with the Chairman of the State Executive Committee and does not file with the Secretary of State shall his name be placed upon the ballot?

4. If a party qualifies after the time limit as set by Section 588 and 589 of the Code of Alabama of 1923 shall their names appear on the ballot?

In answer to your first inquiry I refer you to Section 60 of an Act approved February 25, 1931, Act No. 50, H. B. 73 (General Acts, 1931, page 73) and to subsection (f) thereof, which is as follows:

"The words 'County Office' or 'County Offices' shall include members of County Executive Committees of political parties, and County Treasurers, County Superintendents of Education, Probate Judge, County Commissioners or members of Boards of Revenue, Member of County Board of Education, Sheriffs, Tax Collectors, Justices of Peace, Constable and like officers, Tax Assessors, Clerk of the Circuit Court, and all other officers who do not receive their compensation from sources other than the County. 'County Officers' or 'County Offices' do not include State Senators, Members of the Legislature, Circuit Judges, Circuit Solicitors, Congressmen, Members of the State Executive Committee of

political parties, delegates to National political conventions, nor any officers whose compensation is paid by the State of Alabama or the United States."

The section last above quoted definitely and postively decides the question that State Senators, Members of the Legislature (House of Representatives) and Members of the State Executive Committee are not County Officers. The Act seems to classify the various "offices" or officers not upon the territory which they serve but seems to classify them as officers of that government or subdivision of government from whom they receive their remuneration. Such was not the case under the primary laws existing prior to the enactment of the 1931 Act, *supra*. Section 610 of the Code of 1923, which section was part of the old Primary Election law, discloses that the question as to whether or not a particular "officer" was a State Officer or County Officer depended upon whether or not he was elected by the voters of more than one county. If he was elected by the voters of only one county he was considered a County Officer but if he was elected by the voters of more than one county he was considered a State Officer. Said Section 610 has now been superseded by Section 8 of the 1931 Act, *supra*. A comparison of these two provisions of law readily discloses the intention of the Legislature. I am constrained to hold that Members of the Legislature (House of Representatives) State Senators and Members of the State Executive Committee are State Officers. The law on this point is unambiguous and will bear no other construction.

You next ask that if said officers are State Officers shall they file a declaration with the Secretary of State, Chairman of the State Executive Committee and with the Judge of Probate.

Section 18 of the 1931 Act provides as follows:

"That any person desiring to submit his name to the voters in a primary election shall, not later than March 1st, next preceding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the chairman of the County Executive Committee if he be a candidate for a County Office, and with the Chairman of the State Executive Committee, if he be a candidate for any office except a county office, and in like manner, and before March 1st, next preceding the holding of such primary election, pay any assessments that may be required to be paid by him."

The above quoted section taken in connection with Section 60 of said Act, affirmatively shows that all three of the aforementioned officers must file their declarations of candidacy with the Chairman of the State Executive Committee. Said 1931 Act, *supra*, does not require officers to file either with the Probate Judge or with the Secretary of State. However, I refer you to Article 26 of Chapter 19, Code of Alabama, 1923, which Article is commonly known as the Corrupt Practice Act and which Act was in no way

modified by the 1931 Act, *supra*. I specifically refer you to Sections 583, 584 and 586 contained in the above Article.

Section 583 is as follows:

"The word candidate in this article means any person who has announced to the public that he is a candidate for election or nomination to any **public or party office.**"

Section 584 is as follows:

"The word election in this article means any election in which there is submitted to the popular vote the names of any persons for **nomination** or election to any office, or in which there is submitted to the popular or party vote any measure or proposition."

Section 586 is in part as follows:

"Any **candidate** shall, within five days after the announcement of his candidacy for any office, **if the office be a state office, file with the secretary of state, and if the office be a county office, file with the probate judge of said county, and if it be a district or circuit office, file with the judge of probate of each county which is embraced in said district or circuit, the name of not less than one nor more than five persons elected to receive, expend, credit and disburse all moneys contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting the nomination or election of such candidate * * * * ***"

Any person who seeks the office of State Senator, Representative in the Legislature, or Member of State Executive Committee and has announced his intention of running for such offices is a candidate as defined in Section 583, *supra*.

Therefore, being candidates, and seeking State Offices as defined by the 1931 Act, *supra*, I am of the opinion that any person having announced his intention to run for either of the aforesaid offices must not only file with the Chairman of the State Executive Committee but he must also comply with the provisions of Section 500, and file with the Secretary of State. Neither of said candidates need file with the Judge of Probate.

In answer to your third and fourth inquiries I am herewith enclosing a copy of an opinion rendered to you on March 26, 1932, which opinion was written by the Attorney General, wherein it was held that under the provisions of Sections 589 and 590 you are without authority to certify to the various Probate Judges of the State the name of any candidate who has failed to comply with the provisions of the Corrupt Practice Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 27, 1934

Messrs. J. F. McCorvey and
J. W. McClellan,
Highway Officers,
Montgomery, Alabama.

Arresting fees—when made by any officer named in Section 29 (a) of the Alabama Contract Common Carrier Motor Vehicle Act of 1932.

Opinion by Assistant Attorney General Haynes.

Gentlemen:

I have your letter of November 23, 1933, in which you request my opinion as follows:

“We respectfully request your opinion with reference to the fees allowed the officer making the arrest for violations of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932.

“We refer you to Section 29 (a) of House bill No. 113, which reads in part as follows:—‘In the event of conviction, there shall be taxed as costs, and paid to the officer making the arrest, the usual fees allowed by law.

“We will appreciate your opinion on this matter at the earliest possible date, as we need it to clear up a little matter that is now pending.”

In answer to your inquiry, I call your attention to Section 29 (a) of the Alabama Contract Common-Carrier Motor Vehicle Act of 1932, approved October 28, 1932, which is as follows:

“Section 29 (a). Any peace officer, including sheriffs and their deputies, constables and their duties, police officers and marshals of cities or incorporated towns, county police or patrols, state or county license inspectors and their deputies, and special officers appointed by any agency of the State of Alabama for the enforcement of its laws relating to motor vehicles, now existing or hereafter enacted, shall be authorized and it is hereby made the duty of each of them to enforce the provisions of this Act, and to make arrests for any violation or violations thereof, without warrant, if the offense be committed in his presence, and with warrant if he does not observe the commission of the offense. In the event of conviction, there shall be taxed as costs, and paid to the officer making the arrest, the usual fee allowed by law.”

I think, under this Section, there can be no doubt that if any officer named in said Section, makes an arrest for any violation of this Act, such officer is entitled to the arresting fee.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 27, 1934

Hon. Eugene H. Hawkins,
Judge of Probate,
Birmingham, Alabama.

Judge of Probate—Disqualified from performing duties in reference to handling absentee ballots where he is a candidate.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of March 23, 1934, which is as follows:

"Please advise whether or not the Acts of Alabama, Extra Session 1933, page 193, Section 2, prohibits the Probate Judge from handling absentee ballots when he is a candidate for re-election without opposition."

I am of the opinion that the provision of law referred to in your letter specifically and definitely prohibits a Judge of Probate from handling absentee ballots when he is a candidate for any office regardless of whether or not he is opposed. To hold otherwise, we would be compelled to write into the Act something which is not there. Although the real reason for such an enactment might not be present in the case where the Judge of Probate is without opposition, nevertheless the Act specifically uses the word "candidate" and does not restrict his ineligibility to a case where he is opposed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 30, 1934

Hon. I. R. Reddock,
Judge of Probate, Crenshaw County,
Luverne, Alabama.

Counties—Issuance of interest bearing warrants.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 23, 1934 in which you state that at the June term of 1920 your Commissioners Court issued an interest bearing warrant for repairs made on the Glenwood Bridge, a bridge in your county, stipulating that it was to bear eight per cent interest. Said warrant was issued on June 9, 1930. You further state that the warrant was duly registered and that you presume the Court was acting under the authority of an Act approved September 30, 1919 (Acts 1919, page 903).

You request my opinion as to whether or not your Commissioners Court acted within the scope of its authority in stipulating the eight per cent interest in question.

I am of the opinion that your inquiry should be answered in the affirmative. Act No. 652, S. B. 369, approved September 30, 1919 (Acts 1919, page 903) authorized and empowered the Commissioners Court to issue interest bearing warrants in settlement of debts or obligations incurred in the construction or maintenance of its public roads. Section 2 of the said Act provided that the order of the Court should set forth the rate of interest that such warrant should bear. The Act contained no limitation as to the rate of interest. Of course, the rate of interest cannot exceed the legal rate of interest in this State which is eight per cent.

Section 6784, Code of Alabama, 1823, which provides for a maximum rate of interest of six per cent for warrants issued under the provisions of Sections 6782-3, was new to the Code of 1923. If the warrant in question was issued on June 9, 1920, prior to the adoption of the 1923 Code, these sections would have no bearing on the instant case.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 29, 1934

Hon. R. M. Guy, Representative,
Legislature of Alabama,
Letohatchee, Lowndes County, Alabama.

Appropriation for health purposes.

Opinion by Assistant Attorney General Haynes.

Dear Sir.

I have your letter of March 13, 1934, in which you request my opinion as follows:

"Has the Board of Revenue of Lowndes County the right to appropriate \$100.00 for the purpose of rat eradication. This is a public health matter, and is in the interest of the welfare of the county."

It is my opinion your Board of Revenue may make this appropriation under Section 6755, Code of Alabama, 1923, sub-section 20, which is as follows:

"20. To appropriate money to promote or enforce the health and quarantine laws of the State for the benefit of the county and its inhabitants, when requested so to do by the state board of health."

But I call your attention to the fact that before this can be done there must be a request for such appropriation from the State Board of Health.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 30, 1934.

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

Tax Assessor's commissions based on "collections" which includes interest on delinquent taxes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 17, 1934, in which you state:

"Section 3040 of the Code of 1923, as amended by an Act approved October 27, 1923, provides for commissions of the County Tax Assessor. From the reading of this Section, it would appear that the commissions of the Tax Assessor are measured by the collections of the Tax Collector. This Commission has been asked to give advice as to whether or not the interest collected on delinquent taxes could be considered in determining the commissions of the Tax Assessor.

"We would thank you to advise whether or not the Tax Assessor's commission would be paid on interest collected by the Tax Collector as well as on taxes collected by the Tax Collector."

The statute provides that commissions shall be based on "collections." In my opinion this means actual collections, which would include interest when collected.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1934.

Hon. Sam D. Stearns, Sheriff,
Montgomery, Alabama.

How absentee ballots are forwarded to voters applying for same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 26, 1934, in which you request my opinion as follows:

"Please inform me as to how the absentee ballots must be mailed out, whether by registered, special delivery or regular U. S. mail?"

Under Section 678, Code of Alabama, 1923, it is my opinion you may send these absentee ballots by any first class mail. You may send them by regular first class mail or by special delivery or by registered mail. The law simply says they must be sent in sealed envelopes by United States mail. The usual method of sending them is by ordinary sealed mail.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department
State Tax Commission,
CAPITOL.

No privilege tax required to be collected for recording of mortgage made payable to the Home Owners' Loan Corporation of Washington, D. C.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 19, 1934, in which you state:

"Please advise whether or not a privilege tax should be collected for the privilege of recording a mortgage which is made payable to the Home Owners' Loan Corporation of Washington, D. C."

In reply thereto will state that in my opinion no tax is required, this being a Federal agency.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Courts of County Commissioners—no authority to appropriate money for making campaign in bond election.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 14th, 1934, in which you request my opinion as follows:

1. Is there any authority of law for a Commissioners Court to order money paid from the County Treasury for the purpose of making a cam-

paign in an election to determine whether or not the people of a County should vote a Bond Issue. The form of the order of the Court is as follows:

"It is ordered by the Court that the Judge of Probate and Commissioner John Doe be empowered and are hereby authorized to expend such sum not exceeding \$1,000.00, in employing help to get the facts before the people and in inaugurating a campaign for the success of the measure." (The proposed Bond Issue.)

2. Would the Probate Judge be liable on his official bond for drawing any warrant on the County Treasury in payment of a claim filed under such resolutions?

3. Would the County Depository or County Treasury be liable on the bond of such depository or Treasury for the illegal paying out of money under such a resolution for such purpose?

I am of the opinion that your first inquiry should be answered in the negative. I know of no authority of law, either expressed or implied, that would authorize the expenditure in question. There is no more reason why a Commissioners Court could appropriate money in the furtherance of an affirmative vote on a bond issue than they could in the furtherance of a negative vote on the same. There is no logical reason why those in favor of the bond issue should be favored over those that were against it.

In view of the answer to your first inquiry, it naturally follows that your second and third inquiries should be answered in the affirmative.—Section 321, Code of Alabama, 1923; Biennial Report of the Attorney General 1928-1930, page 589.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934.

Hon. Joe Rollins,
Sheriff, Houston County,
Dothan, Alabama.

Baffle Ball Machine—"Marble" games.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of March 12, 1934, in which you ask my opinion as to whether or not a device commonly known as a "marble game" table or "Baffle Ball" is such a device as to come within the prohibition of Act No. 671, General Acts 1931, page 806.

You describe said machine or machines as follows:

"The operator places a nickel in a slot and secures ten balls with which to play the game one time. The top side of the device is a flat surface or plane in which there are a great many holes of equal size and all of which are slightly larger than the balls purchased by the operator; there are several 'hazzards' on the board, such as wire pegs placed in different positions, a horseshoe design, etc; these various holes bear numbers ranging from 100 to 1000; with the aid of a metal plunger attached to the machine the operator may 'shoot' one or more or all of the ten balls at one time; these balls fit, of course, into the various holes, or some of them may roll down the board, which is placed at an incline, fail to go in any of the holes, and in which case such ball makes no score. When all of the balls have been thus 'shot' by the operator, the score is added up and if it is sufficiently high a prize is awarded. Ususually high score is about 5500 and the prize is a package of cigarettes.

"The plunger can be operated at the choice and will of the operator in such way that the ball can be 'shot' easy or hard, thus determining to a certain extent on what part of the board the ball will go and how fast the ball will roll down the inclined surface of the board, and determine to some extent what hole the ball is likely to go into. It has been my observation that by repeated operations of the machine or device the operator acquires a certain skill in the manipulation of the plunger and by his skill and manipulation of the plunger can determine to some substantial extent the kind of score he will make; that an experienced operator is more likely to make a high score than a novice or beginner."

You also ask is it unlawful to operate such a machine where a prize is given for obtaining a certain high score and where no prize is given to the winner of the contest unless one or both of said contestants obtain said high score.

I am of the opinion that said machine is not per ne a gambling device. While there is probably some element of chance as there is in all games, it is my opinion that in practically all instances the more skillful player will win.

In answer to your second inquiry, I am of the opinion that it is not unlawful for the operator of the machine to offer a prize to any and all contestants who obtain a certain stated high score. I refer you to 27 Corpus Juris 1063, Section 149 (d) wherein the following rule is stated:

" A prize, pulse, or premium offered to the successful player in a

game or competitor in a contest by persons other than such players or Competitors is not a bet or wager. The fact that each player or competitor is required to pay an entrance fee does not make the transaction a bet or a gaming transaction. But when the stake is contributed by the participants alone, and the successful contestant is to have the fund thus created, this does constitute a bet or a wager."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934.

Hon. Grover C. Hall,
Judge of Probate,
Montgomery, Alabama.

(1) Judge of Probate cannot make a flat charge for recording deeds mortgages and similar instruments.

(2) Judge of Probate must give transcript of any paper or record required to be kept in his office.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of March 19, 1934 in which you request an opinion of this office on the following matters:

1. Can a Judge of Probate make a flat charge for recording deeds, mortgagees and similar instruments, or is he required to base his fee on the number of words contained in the instrument to be recorded?
2. Can a Judge of Probate, in his official capacity, make a certificate showing that certain property is un-encumbered?
3. If your answer to question No. 2 is in the affirmative would such a certificate be good and would the Judge of Probate be responsible for any defects therein?

I am of the opinion that your inquiry should be answered in the negative. Section 7284, Code of Alabama, 1923, provides that the Judge of Probate is entitled to the fee of fifteen cents per hundred words for the recordation of wills, deeds and other similar instruments. Prior to the enactment of the so-called Sparks Bill, a Judge of Probate could have completely waived such fees if he so desired. However, since the passage of said bill a Judge of Probate must collect all fees in view of the fact that he is only entitled to a fixed compensation and all the surplus reverts to the county.

Opinion of the Attorney General to Hon. G. H. Howard, Judge of Probate, Elmore County, under date of January 30, 1934.

In answer to your second inquiry, I refer you to subdivision 7 of Section 581, Code of Alabama, 1923, which is as follows:

"It is the duty of the Judge of Probate, on application of any person, and the payment or tender of lawful fees, to give transcripts of any paper or record required to be kept in his office, properly certified."

There is no specific statute making it a duty of the Judge of Probate to certify that any particular piece of property is unencumbered, however, under the above section, he must certify as to any and all incumbrances upon the property which are duly recorded in his office.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Departments,
State Tax Commission.
CAPITOL.

Trailers operating within the corporate limits of any city or incorporated town or within the police jurisdiction thereof must carry license.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

Your letter of November 20, 1933, addressed to the Attorney General has been referred to the writer for reply.

You request an opinion as to whether or not the State Tax Commission can or should require trailers used exclusively within the corporate limits of towns or cities permitting their use to have proper license tags attached.

I am of the opinion that your question should be answered in the affirmative.

A trailer is defined in Act No. 38, H. B. 112, 1932 (General Acts 1932, page 68) as any vehicle designed to be drawn by a motor truck or truck tractor, but supported wholly upon its own wheels and intended for the car-

riage of freight or merchandise and with a load capacity of under one thousand pounds. Section 3 of said Act, supra, is as follows:

"No person shall operate any trailer on any highway."

However, subsection (b) of Section 10 provides as follows:

"(b) If any motor-truck, semi-trailer truck or trailer, shall be licensed by any city or incorporated town in this state, and the registration plate or plates issued as evidence of said license shall be conspicuously exhibited on said motor truck, semi-trailer truck or trailer in the manner required by ordinance, the provisions of Section 3, 4, 5, 6, and 7 hereof shall not apply to the operation of such motor-truck, semi-trailer truck or trailer, within the limits of the city or incorporated town issuing such license, or within the police jurisdiction thereof. Provided, that all cities and incorporated towns are hereby empowered to provide, by ordinance, maximum limits with respect to the weight, height, width and length of motor-trucks, semi-trailer trucks and trailers within their respective boundaries, not less, however, than the maximum limits prescribed in Sections 4, 5, 6, and 7 hereof, to authorize the operation of trailers, therein, to impose license taxes on motor-trucks, truck tractors, semi-trailers and trailers, and to require that all vehicles to which licenses may be issued shall affix the registration plate or plates issued as evidence of said licenses to said vehicles in some conspicuous place, to be prescribed by ordinance.

The mere fact that the above quoted provision provides for a city license does not preclude the State from collecting a State license for the use of such a vehicle,

The city license is a condition precedent to the use of such vehicle even within the city limits or the police jurisdiction thereof and is not only the only license required for the operation of such a vehicle.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934.

Hon. L. E. Birdzell, General Counsel,
Federal Deposit Insurance Corporation,
Washington, D. C.

Banks and Banking—Status of State Banking Institutions in relation to Federal Deposit Insurance Corporation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 9, 1934, in which you request my opinion concerning the status of State banking institutions in relation to the Federal Deposit Insurance Corporation. You inquire as follows:

"1. Whether the laws of the State authorize or permit State banks, trust companies, or mutual savings banks, organized or doing business under the laws of the State, to purchase Class A Stock of the Federal Deposit Insurance Corporation and to assume the obligations incident to the ownership of such stock.

"2. Whether the laws of the State authorize or permit this Corporation to be appointed Receiver of a State bank, trust company or mutual saving bank, organized or doing business under the laws of the State in the event the bank should be closed on account of inability to meet demands of its depositors.

"3. In the event the law of the State does not permit the appointment of the Corporation as Receiver, how may the Corporation be assured of the enjoyment of its right to receive dividends on the same basis as in the case of a closed National Bank? Will such recognition in your State: (a) be accorded by State law; (b) be evidenced by the allowance of claims by appropriate State authority; (c) be affected by assignment of claims by depositors; or (d) be accorded by some other method?"

I am of the opinion that your first inquiry should be answered in the affirmative. The Federal Banking Act of 1933 clearly authorizes such a procedure. Our State Banking Laws, recently enacted at the 1933 Special Session of the Legislature recognized the provisions of Federal Banking Laws (Act No. 56, H. B. 367, approved March 9, 1933, General Acts of Alabama, 1933, page 39.) Sections 9 and 10 of said Act provide as follows:

"Section 9. The State Superintendent of Banks, with the concurrence of not less than two other members of the Banking Board, or any three members of the Banking Board without action by the Superintendent, are hereby authorized, in addition to all other powers herein conferred by law upon the Superintendent of Banks and the Banking Board, whenever in their judgment the circumstances warrant it, to authorize any bank to comply with the provisions of any law heretofore, or hereafter, enacted by the Congress of the United States of America, which may confer rights or privileges upon banks which are members of the Federal Reserve System, or of any Federal banking agency hereafter created, or upon any bank complying with the requirements of such Federal Law.

"Section 10. Any bank may do any and all things necessary or desirable to permit it to operate under the provisions of any Act of Congress of the United States now or hereafter enacted."

It will be seen from the above that the Federal Banking Laws may be recognized by the State Superintendent of Banks or Banking Board (Section 9), or by the bank, itself (Section 10). Other sections of this Act further recognize the Federal Banking Laws.

The Federal Banking Laws provide for purchase of Class A Stock of the Federal Deposit Insurance Corporation by State institutions. The State laws recognize the Federal laws in this respect. The premises considered, I am, therefore of the opinion that State Banking institutions may purchase Class A Stock in the Federal Deposit Insurance Corporation in compliance with the Federal law.

In answer to your second inquiry I wish to refer you to Section 6309, Code of Alabama, 1923, which provides as follows:

"6309. Superintendent appoints agent to aid liquidation; compensation.—The Superintendent may, under his hand and official seal, appoint an agent to assist him in the duty of liquidation and distribution of the assets of any bank taken possession of by him under the provisions of this article, the certificate of appointment to be filed in the office of the superintendent and a certified copy in the office of the probate court in the county in which the principal office of such bank is located, and such special agent shall receive a salary not exceeding two hundred dollars per month for the time he is actually engaged in assisting and liquidating the affairs of the bank. The superintendent may authorize such agent to perform such duties connected with such liquidation and distribution as the superintendent himself could in person do and perform."

I am of the opinion that the Federal Deposit Insurance Corporation may be appointed as the agent by the Superintendent of Banks under said section.

As the Corporation, in effect, may be appointed as receiver, answers to your third inquiry may be unnecessary. However, in view of the fact that the State Superintendent of Banks may not deem it advisable to appoint the Corporation as agent under Section 6309, Code of Alabama, *supra*, I will give you my opinion on the question presented.

The Corporation may be assured of the enjoyment of its rights to receive dividends by the allowance of claims by appropriate State authority. As heretofore stated, the State recognizes the Federal law. The Federal law provides that the corporation shall be subrogated to all rights against the closed bank of the owners of deposits and shall be entitled to receive the same dividends from the proceeds of the closed bank as would have been payable to such depositor, etc. In my opinion, this right of subrogation must be recognized by the proper authorities in the liquidation of closed State

banks. Of course, sufficient evidence of the right of subrogation must be presented before such right shall be recognized.

The right of the Corporation to receive its proper share of the dividend of a closed bank also may, in my opinion, be effectuated by assignment of claims of depositors.

As to whether the right in question is accorded by State law is somewhat doubtful. There is no direct authority of State law on this point. However, as the State recognizes the Federal law in this respect, it may be held this right is accorded by State law. A definite answer to this phase of your third inquiry does not appear to be necessary in view of what already has been stated. Therefore, I will pretermit expressing my opinion in this regard for the time being.

I hope the foregoing interpretation of the points of law involved will give you the information you desire and be of assistance to you.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1934.

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
Birmingham, Alabama.

1. The statutes of Alabama allowing the Tax Assessor a commission based on the amount of taxes collected held not violative of constitutional rights.

2. Tax Collector cannot determine the validity vel non of an assessment certified to him.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 16, 1934. in which you state:

"The Deputy Tax Assessor of this County has made several hundred assessments against shares of capital stock owned by residents of this County which have caused an untold amount of confusion and hard feelings, etc. I, as Tax Collector, have been threatened with suit if I proceed to collect assessment against a certain taxpayer. The attorneys for this taxpayer, Benners, Burr, McEasy and Forman, have threatened to bring this suit, claiming the assessment to be illegal for the reason that

the Deputy Tax Assessor was interested in the amount of the assessment. They base this complaint on the case of Myers vs. Shields, 61 Fed Rep. 713.

"I would thank you to investigate this statute and give me your opinion as to whether or not it applies to assessments made by the Deputy Tax Assessor on shares of capital stock."

In reply I beg to advise that in my judgment the case of Myers v. Shields, 61 Fed. Reporter, 713 is effectively answered by Oscamp v. Lewis, Auditor, 103 Fed. page 906, construing the same statutes of Ohio, and on the same contention made in the Shields case. This was a decision of the Circuit Court of Appeals whereas the Shields decision was, I believe, a District Court decision. The Oscamp case is cited approvingly and the same decision arrived at in Jackson Lumber Company v. McGrimmon, Tax Collector, 164 Fed. 759 (Fla.). See also:

27 Am. & Eng. Ency. 2nd, 665.

Tenn. Fertilizer Co. v. McFall, 106 S. W. 206.

178 Tenn. 645 at page 649.

Likewise the principles enunciated by the United States Supreme Court in Hibben v. Smith, 191 U. S. 310, strongly support these authorities, although the questions were not identical.

I am therefore of the opinion that our system of taxation which has existed for many years and which is still the case in all but, I believe, two counties, of paying the Assessor a commission on the total assessments made, is not violative of the Federal Constitution.

This opinion is not to be understood as passing on the facts in any particular assessment. If the parties have legitimate objections or defenses to any particular assessment, ample remedies are afforded by our laws in my opinion.

I know of no discretion vested in the Tax Collector to determine the validity vel non of an assessment.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 4, 1934.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

The names of candidates for State or National offices elected by the voters of only one county need not be rotated on ballots. Names printed in alphabetical order.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of March 23, 1934, which is as follows:

"Please refer to Section 8, page 75, Acts of the Legislature of 1931. As I construe this Act, the names of the candidates for Congress from the Ninth Congressional District, members of the Legislature, the State Democratic Executive Committee, and Circuit Judges should be printed on the official ballot in alphabetical order, in view of the fact that these offices are to be filled by the voters of Jefferson County only.

"Please advise me whether or not I am correct in this opinion, at your earliest possible convenience."

I am of the opinion that the construction placed by you on the above mentioned provision of law is correct. Section 8 of Act No. 56, H. B. 73, General Acts 1931, page 73 provides, among other things, as follows:

" provided, that the Judge of Probate shall have said ballots so printed that the names of the opposing candidates for any national or state office to be voted for by the voters of more than one county shall, as far as practicable, alternate in position upon the ballots to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots, and when printed, said ballots shall be distributed impartially and without discrimination by the Probate Judge."

Section 60 of the aforementioned act defines state and county offices or officers. But in view of the fact that all of the offices mentioned by you in your letter are to be elected by the voters of Jefferson County alone, it is not necessary to here set out whether said offices are state, county or national. The controlling question in this instance is whether or not the offices are filled by the voters of only one county. Jefferson County is in itself a congressional district, namely the Ninth District. The Congressman to represent that district is to be elected by the voters of Jefferson County only. Members of State Executive Committees are elected from Congressional Districts, consequently only the voters of Jefferson County vote for the State Executive Committeemen to represent the Ninth

District. Of course members of the Legislature are elected by the voters of only one county. Jefferson County is a separate Judicial Circuit and only the voters of Jefferson County select the Circuit Judges of that Judicial Circuit. I am, therefore, constrained to hold that the names of candidates for the above mentioned offices shall be placed in alphabetical order on the ballots to be submitted to the electorate of Jefferson County.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 4, 1934.

Hon. T. F. Griffin,
Sheriff, Etowah County,
Gadsden, Alabama.

Sheriff entitled to pay out of the Fine and Forfeiture Fund for serving subpoenas on witnesses to appear before the Grand Jury issued by the clerk where no bill is found.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows:

"General Acts of 1931 No. 574, page 668 allows the Clerk of the Court fees for serving subpoenas before the Grand Jury, where no bill is found. We are at a loss to understand why the Sheriff is not entitled to fees for serving these subpoenas, same chargeable to 'Fine and Forfeiture Fund.' "

An Act of the Legislature approved July 30, 1931, (General Acts, 1931, p. 668) provides for the issuance by the Clerk of the Circuit Court of subpoenas for witnesses to appear before the Grand Jury. It does not say anything about the service of these subpoenas, but there could be no reason for making this provision for the issuance of same unless these subpoenas are to be served. Therefore, it falls on the sheriff to serve the same, and this being true it is my opinion that the sheriff would be entitled to pay for such services in cases where the Grand Jury fails to find a bill, and he would be entitled to get his pay out of the Fine and Forfeiture Fund of the County. The Act supra is as follows:

"Section 1. That it shall be the duty of the Clerk of the Circuit Court in term time or vacation, to issue subpoenas for any necessary

witnesses to be and appear before the Grand Jury without application having been made for such witnesses by the Grand Jury.

"Section 2. For the services performed as required by this Act, the Clerk shall receive the same fees as for issuing other subpoenas."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 4, 1934.

Hon. Pleasant Nichols,
Sheriff, Pike County,
Troy, Alabama.

The disqualification of sheriff, Judge of Probate, or Clerk of the Circuit Court, who constitute the election board, who are candidates for office in any election held in this State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 1, 1934, in which you request my opinion as follows:

"Referring to Act No. 178 S-27-Garrett, page 193, Extra Session 1933 Legislature, providing that in any general, special or primary election, when the Judge of Probate is a candidate for any office, he shall be disqualified from performing any of the duties in reference to the handling of absentee ballots, etc., and that all such duties shall be performed by the Sheriff.

"Such a condition exists in this County, as the Probate Judge is a candidate for re-election. I am not a candidate for office, however, my Chief Deputy, who is a relative of mine, is a candidate for Sheriff, and, in this connection, I would like an opinion as early as possible, as to whether or not the Sheriff could be disqualified on the grounds that his Chief Deputy being a relative and a candidate would necessarily be associated with the handling of absentee ballots, or if there are any grounds, other than that of being a candidate, on which the sheriff could be disqualified."

My answer to the above is in the negative. I do not think the fact that the Sheriff's Chief Deputy is a candidate for office in a primary would disqualify the Sheriff from performing his duties as a member of the election

board. The Act approved April 19, 1933 (General Acts 1933, page 193) which has to do with this matter states exactly what is necessary to be done in the event any member of the Board is disqualified. See Section 2, which is as follows:

"Section 2. In any general, special or primary election, when the Judge of Probate is a candidate for any office, he shall be disqualified from performing any of the duties in reference to the handling of absentee ballots which are now or may hereafter be required to be performed by him, and all such duties shall be performed by the Sheriff of said County. In the event the Sheriff is also a candidate in such election the Judge of Probate shall, at least forty-five days prior to the date of the election, certify said facts to the presiding Judge of the Circuit in which such county is located. and within five days thereafter such Circuit Judge shall appoint a qualified elector of said County, who is not a candidate for any office, to perform such duties. The Sheriff, or, in the event, he is disqualified as herein provided the person so appointed by the Circuit Judge, is hereby authorized to perform all of his duties, with reference to the handling of absentee ballots, as are now or may hereafter be required to be performed by the Judge of Probate."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 4, 1934.

Hon Tom Taylor, Clerk,
Circuit Court, Shelby County,
Columbiana, Alabama.

Party confined in penitentiary is liable for poll tax during the time he is in service and must pay the same even though his citizenship is later restored, before he can vote in an election in Alabama.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 1, 1934 in which you request my opinion as follows:

"Please advise whether a man sent to the penitentiary for a felony and was there for several years, served his time and his citizenship restored, is due to pay a poll tax while in the penitentiary."

My answer to the above request is in the affirmative. This office has repeatedly held that poll tax is a fixed charge against all citizens of the State between the ages of twenty-one and forty-five. True it is made optional as

to payment, and as an incident thereto if a person fails to pay any one year, after he becomes liable, he is disqualified from voting or holding office in this State until this tax is paid. Therefore, the fact that the party has served in the penitentiary for any length of time does not relieve him of paying poll tax that may become due even while he is so serving.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 6, 1934.

Hon. Grover C. Hall,
Judge of Probate.
Montgomery, Alabama.

Names of candidates for State Executive Committee alternate on ballots in all cases where congressional district consists of more than one county.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of March 30, 1934 in which you request my opinion as to whether or not the names of candidates for a state executive committee of a political party must alternate on ballots submitted to the voters on May 1, 1934.

I am of the opinion that the names of such candidates must be alternated on the ballots. Section 8 of Act No. 56, General Acts, 1931, page 73, is as follows:

"Section 8. The Chairman of the State Executive Committee of the parties entering such primary election shall, at least forty days prior to the holding of the same, certify to the Secretary of the State of Alabama, the names of all candidates running for State, National, circuit and district offices, State Senators and Members of the Legislature and all other candidate except candidates for county offices, and the Chairman of each County Executive Committee of the parties entering such primary election shall, at least forty days prior to the holding of the same, certify to the Probate Judge of the county the names of all candidates for County offices, and the Secretary of State shall, within not less than Thirty days prior to the time of holding such primary elections, certify to the Probate Judge of any county where an election is to be held for any particular office the names of the candidate for such office, and the Probate Judge of each County in Alabama shall in the manner and form

hereinafter set forth prepare or have prepared all ballots voted in such primary election; provided, that the Probate Judge shall have said ballots so printed that the names of the opposing candidates for any National or State office to be voted for by the voters of more than one county shall, as far as practicable, alternate in position upon the ballots to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office first position, second position, and every other position, if any, upon an equal number of Ballots, and, when printed, said ballots shall be distributed impartially and without discrimination by the Probate Judge."

Section 60 of said Act, in my opinion, classifies members of said executive committee as state officers for the purposes of the Act.

The opinion rendered by me on March 10, 1932 wherein I expressed a contrary opinion is hereby withdrawn.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1934.

Hon. James H. Hard, Jr.,
State Comptroller,
CAPITOL.

Benefits of Section 412, Acts 1919, page 282 (Section 377, 1929 Revenue Compilation) inure to deceased Tax Collector's personal representative and he may proceed in the premises as the Tax Collector was authorized.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please refer to Compilation of Revenue Laws of Alabama, 1929, page 332, Section 377, and advise on the following matter of inquiry:

"A Tax Collector in one of the counties of the State, whose office is now being investigated by an Examiner of Accounts, died without having made full settlement of his collections of his taxes for the tax year 1932. It appears from the statement of the Examiner that the Tax Collector failed to follow the provisions of law, in that he did not file with the Probate Judge of his County a list of certain delinquent taxpayers in his County who owned certain real estate, such filing being for the purpose of having the Probate Judge render a decree for the sale of said

lands for taxes, and after the final day of settlement for the taxes, of the tax year 1932 had passed, the Tax Collector died, as stated above, without making full settlement. The amount of taxes with which the Tax Collector was chargeable is charged against him on final settlement.

"Under the provisions of the Section of the Revenue Laws, to which reference above is made, the Administratrix of the estate of the deceased Tax Collector wishes to sell the lands of the delinquent taxpayers for the payment of the taxes with which the deceased Tax Collector is chargeable on final settlement, and which she will settle as the representative of his estate.

"Your opinion is requested as to whether the Administratrix of the estate of the deceased Tax Collector will have to obtain a decree from the Probate Judge for the sale of the lands belonging to such delinquent taxpayers for the taxes due by them."

In reply I advise that under the provisions of Section 3090, Code of Alabama, 1923 (Section 243, page 152, Revenue Compilation 1929) the personal representative of a deceased Tax Collector is required to make settlement of the affairs of his office "as soon as practicable, and not later than the time when the Tax Collectors are required to make settlements."

In reply to your second question, I call your attention to opinion in Biennial Report 1930-32, page 990, in which it was held that Section 377 of the 1929 Revenue Compilation, merely gives the Tax Collector a lien, when he has failed to collect taxes and the same have been charged against him, and that the State has no interest in the enforcement of the lien.

The Section provides that the lien may be enforced in favor of the Tax Collector in the same manner as are State and County Taxes, at any time within twelve months after the taxes are charged to the Tax Collector.

I am of the opinion that the benefit of the statute inures to the benefit of the Tax Collectors' estate and personal representatives may proceed in the premises in the same manner as the Tax Collector was authorized.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 20, 1934.

Hon. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

Under facts set out Tax Commission authorized to approve partial redemption application by Home Owners Loan Corporation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 18, 1934, in which you state:

"In an opinion rendered by your office on September 20, 1933 to the Hon. J. F. Posey, Judge of Probate of Autauga County, you held as follows:

" 'The provision in Section 3109 permitting any mortgagee or purchaser of such lands, or any part thereof, to redeem the part so mortgaged or purchased, refers to mortgages and purchasers prior to the sale of the land for taxes. After such sale the tax payer has no right or privilege with reference to such land, except to redeem it; and, in order to redeem it, he must redeem the whole tract sold, unless someone else has redeemed a part thereof as provided by the statute.'

"The Home Owners' Loan Corporation of Washington, D. C., has been taking a number of mortgages on property where it becomes necessary to make a partial redemption from a previous tax sale. Section 19 of the mortgages given to the Home Owners' Loan Corporation indicates that such mortgages are made for the purpose of taking up existing liens on the property in question. In fact, we are informed by the Attorney for the Home Owners' Loan Corporation that such corporations cannot lend money for any other purpose than that of retiring liens which are already of record, or for making repairs to the property of the borrower. Under these circumstances, it would appear that the mortgage given to the Home Owners' Loan Corporation is in practice nothing more than an assignment of existing liens, although in theory it is a new mortgage. Under these circumstances, we ask you to advise whether or not an application for partial redemption presented by the

Home Owners' Loan Corporation could be approved by this Commission in accordance with the provisions of Section 3114 of the Code of 1923."

In reply I advise that under the facts set out, I am of the opinion that you can make such approval.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 5, 1934.

Hon. Claude Hardy,
Judge of Probate, Escambia County,
Brewton, Alabama.

Request for absentee ballot must be made for election to be held
June 12, 1934.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you request an opinion of this office as to whether or not it is necessary for a person to request an absentee ballot to be voted in the Primary to be held on June 12, 1934 where said person requested an absentee ballot to be voted in the Primary held on May 1, 1934.

I am of the opinion that any person who desires to vote an absentee ballot in the Primary to be held on June 12, 1934 shall request an absentee ballot separate and apart from the request which he may have made of you before the Primary held on May 1, 1934.

I refer you to Section 1 of Act 178, S. B. 27 (General Acts, 1933, page 193) which section is as follows:

"Section 1. That for every general, special, primary, or municipal election hereafter held in this State, there shall be printed, provided and furnished to the Judge of Probate of the county in which such election is being held, by those charged by law with the duty of furnishing other supplies for said elections, a sufficient number of ballots to be used by absentee voters, which ballots shall bear printed thereon the words "Official absentee ballot," and which said ballots, bearing said printed endorsement, shall also carry, attached thereto and forming a non-detachable part thereof, the printed form of affidavit required by section 410

of the Code of Alabama, 1923, if the election be a general, special or municipal election, or by section 682 of said Code, if the election be a primary election. The said ballot shall be void and shall not be counted if the said affidavit is detached therefrom."

Also wish to call your attention to Section 677, Code of Alabama, 1923 which section is as follows:

"677. Any qualified elector of this state whose name at the time of such primary election appears on the official list of qualified voters in said county and who may at any primary election hereafter held pursuant to law in this state, by reason of his regular business and in the performance of his regular duties, be absent from the county in which he is a qualified elector, may vote in such primary election in the manner and under the regulations hereinafter prescribed with like effect as if he were casting his vote in person at his regular and proper polling place."

It is possible that a person may be at the polling place on June 12, 1934, the date of the second Primary Election, who was absent from said voting place on May 1, 1934.

The elections are entirely separate and distinct and have no connection whatsoever.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 15, 1934

Hon. Paul J. Hooton,
Member of State Senate,
Roanoke, Alabama.

1. Where more than two candidates seek Democratic nomination to any office only the two receiving the highest number of votes are entitled to have their names printed on the ballot to be used in the Second Primary.

2. If either of the two who receives the highest number of votes desires to withdraw, the other candidate is to be declared the nominee and his name need not be placed on the ballots to be used in the Second Primary.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of May 5, 1934 in which you request an opinion of this office on the following matter.

You state that A, B, C, D and E were candidates for Democratic nomination for the office of sheriff of Randolph County. That A received 1500 votes, B receives 1300 votes, C receives 1100 votes, D received 700 votes and E received 500 votes. You further state that within three days after the First Primary B withdrew from the race.

You ask whether or not C can demand the candidate receiving the third highest number of votes to enter the Second Primary with A or whether or not A is automatically the nominee of the party.

I am of the opinion that under the above stated facts, B having withdrawn from the race and having received the second highest number of votes that A who received the highest number of votes is automatically the nominee of the Democratic party. I refer you to certain provisions of Section 29 of the 1931 Primary Act, Act No. 56, H. B. 73 (General Acts 1931, pages 73-96). On the bottom of page 85 and the top of page 86 appears the following provision:

"At the second primary election no one can be a candidate except the two persons who received the highest number of votes for the office for which they were candidates in the first primary election."

Beginning on line 5 and ending on line 20 of page 87 appears the following provisions:

"In the event either of the two candidates receiving the highest number of votes in the first primary election shall determine not to enter the second primary election herein provided for, he shall, as soon as possible and not less than ten days after the holding of the first primary election, certify his declination to enter such second primary election to the chairman of the State Executive Committee for his party, if the office is an office other than a county office, or to the chairman of the county executive committee of his party if the office is a county office, and upon the receipt of such notification the chairman of such committee shall declare the other candidate the nominee of the party for said office and certify his name as such nominee to the Secretary of State or Judge of Probate, as the case may require, and a second primary election is the nomination of a candidate for that particular office shall not be held, nor shall his name be printed on the ballot of the second primary election."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 17, 1934.

Hon. J. L. Davis,
Election Manager,
Columbiana, Alabama.

Elections—Method of assisting elector who is unable to prepare his own ballot.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 11, 1934, in which you state:

"In the Primary Election on May the first, 1934, I was Election Manager for Beat One, Box 3, Shelby County, Alabama, and under the law will serve in the Run-Off Primary on June the 12th, 1934.

"I desire your construction of Section 490 of the Code of 1923, and Section 22 of General Acts of Alabama, Regular Session, 1931 at page 82.

"Considerable confusion was experienced in this County and in my Box in reference to assistance to electors in preparing their ballot.

"The card of instructions sent out by the Probate Judge contained this provision :

" 'Any elector applying to vote, who shall state, under oath, to any of the Inspectors that by reason of his inability to write the English language, or by reason of blindness, or of the loss of the use of his hand or hands, he is unable to prepare his ballot, may have the assistance of any person he may select. In such case, said elector must remain within the polling place and the Inspectors shall send for the person selected. If said person cannot be found, then any other person he may select.'

"The above quoted instructions were evidently taken from Section 490 of the Code, whereas, it seems that the Acts of 1931 changes the rule and provides that only Managers shall assist a voter in the preparation of his ballot. Operating under the instructions furnished by the Probate Judge, Watchers and other persons came into the election room and prepared ballots for voters without regard to physical or other disability, and the Watchers did this, notwithstanding the provisions of Section 20, page 81 of the Acts of 1931 above referred to.

"The exact information I desire is whether when an elector is entitled to assistance in preparing his ballot, it must be done by two of the

election managers, as provided by Section 22 of the 1931 Acts above referred to or whether such assistance shall be rendered according to the provision of Code Section 490 above referred to."

In reply I beg to advise that Section 22 of the Primary Election Act of 1931, page 73, very specifically sets out the manner in which an elector may be assisted in the preparation of his ballot. Section 22 is as follows:

"That if a qualified elector is unable to read or is so physically disabled that he can not make his cross mark on a ballot, and request assistance in preparing his ballot, the inspector shall swear him as to such disability, and thereupon no more nor less than two inspectors shall assist such voter by one of them in the presence of the other inspector, marking his ballot as he directs. Each director in preparing his ballot shall prepare the same in the room or place where such election is being held, and not elsewhere."

In my opinion this repeals and is in lieu of Section 490 of the Code and that no one but the two inspectors in the manner set out in Section 22 can assist an elector in preparing his ballot. If you are operating under instructions based on Section 490, such instructions should be changed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 18, 1934.

Hon. Grover C. Hall,
Judge of Probate,
Montgomery, Alabama.

1. Present cash value of long term lease determined by table set out. 144 Ala. page 220.
2. Tax due upon filing instrument for record; subsequent cancellation does not relieve liability for the tax.

Opinion by Assistant Attorney General Moore.

I have your letter of March 22, 1934, in which you state:

Dear Sir:

"There is in my office a long term lease which has been recorded, and the question arises as to the method of determining amount of the privilege tax to be charged. I have studied the opinion of the Attorney

General of 1926-1928, page 183, and find a point that is not clear to me. What is the meaning of the terms 'present cash value?' Does this mean the amount of gross consideration recited in the lease, or is it proper to deduct the fixed charges which are due, and will become due to the State in the form of ad valorem taxes?

"There are other items, such as fire insurance, and depreciation of the building that I would like your opinion upon.

"The party that offered this lease for record wishes to cancel same. Can the amount of the privilege tax be adjusted according to the amount of money already passed?"

In reply I advise that in determining the present cash value of the lease as referred to in the opinion of the Attorney General 1926-1928, page 183, I call your attention to the case of Reiter-Connolly Manufacturing Company vs. Hamlin, an Admr., 144 Ala. 192 at page 220. The table there set out will enable you I believe to determine the present cash value of the lease.

I know of no authority to deduct from such present cash value such as taxes fire insurance, depreciation, etc.

Further the lease having been offered for record the tax became due and it was the duty of the Probate Judge to collect the same. The party cannot now by cancelling the lease, relieve himself or the Probate Judge of liability for the amount of the tax due when the instrument was filed for record.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 22, 1934.

Hon. W. A. Clardy,
Judge of Probate, Randolph Co.,
Wedowee, Alabama.

Pensions—Placing of widow of deceased Confederate pensioner on pension roll.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 3, 1934 in which you request my opinion as to whether or not the widow of a deceased Confederate pensioner, who married said pensioner on December 15, 1903 and who is otherwise qualified, is entitled to draw a pension.

I am of the opinion that your inquiry should be answered in the affirmative.

Your inquiry presents the question as to whether the date of the marriage to the pensioner is governed by Section 2938, Code of Alabama, 1923 or by Section 3 of Act No. 247, H. B. 29, approved September 6, 1923 (Acts 1923, page 250). The code section provides that the marriage be, "prior to January 1, 1903," in order for the widow to enjoy the benefits of the pension. The 1923 act provides that no widow shall be entitled to the benefits of the pension who shall have married, "since the year 1903."

The Code of 1923 was adopted August 17, 1923. Section 2 of the act adopting the code provides that, "no act passed on or after the 10th day of July, 1923 shall be repealed or affected in any manner by the adoption of this code." The 1923 act in question was approved and became effective on September 6, 1923. Since the 1923 act in question is the act of last adoption, same would control over the code provision under consideration.

Therefore, the date of the marriage to the pensioner is governed by the 1923 act, viz: the marriage must not have been, "since the year 1903," which clearly means since December 31, 1903. In other words, if the marriage was consummated on or before December 31, 1903, the widow would be entitled to be placed on the pension roll in this respect.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 7, 1934.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County.
Birmingham, Alabama.

Filing tax on long term lease discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 17, 1934, asking my opinion as to proper filing tax on instrument, photostatic copy of which you enclose.

In this instrument, a certain gasoline filling station together with the equipment thereof is leased for a term of three years, with option to renew for a further term of two years, upon these terms:

"Rental payable monthly in sum equaling one cent per gallon on gasoline lessee delivers to and sells from said premises; minimum monthly rental \$3.00."

Section 21½, Acts 1927, page 139, provides for filing tax on deeds, bills of sales, or other instruments "which conveys any real or personal property within this State, or which conveys interest in any such property * * * upon all such instruments executed to convey real or personal property * * * of the value of \$500.00 or less, there shall be paid the sum of fifty cents." Where the value is more than \$500.00, the tax is fifty cents for each \$500.00 in value or fraction thereof.

It will therefore be seen that there is a minimum tax of fifty cents upon any instrument liable for the filing tax, upon such filing for record.

In an opinion appearing in the Biennial Report of the Attorney General, 1920-1928, page 183, it was held that a long term lease conveyed an interest in real estate, and was subject to the filing tax dependent "upon the cash value at the date of making such lease of the interest conveyed."

In an opinion appearing in Biennial Report 1928-1930, page 538, the method of determining such present cash value was discussed and the table set out in *Reiter Connolly Mfg. Co. v. Hamlin as Admr.*, 144 Ala. 220, was suggested, as a practical method of arriving at a fair result.

The statute makes the tax payable on the value of the property conveyed. The determination of the value is necessarily a judicial question to be determined by the Judge of Probate in a judicial capacity. In the absence of fraud or palpable mistake, I assume his finding of fact is conclusive.

Applying the foregoing principles I suggest that you estimate or ascertain as best you can the total probable monthly rental and apply same method similar to the table suggested in the *Hamlin* case, to determine the present cash value of the interest conveyed, giving consideration to any special facts appearing in any particular case.

The last paragraph is suggested as an aid to you. The Judge of Probate is the officer charged by law with the judicial ascertainment of the value of the property conveyed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

Comptroller not authorized to refund license taxes paid in prior years out of current funds under the provisions of the Budget Act of 1932.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 23, 1934, with reference to application for refund by the Van Heynigen Brokerage Company for refund of license paid during the years from October 28, 1919, through October 18, 1931, for engaging in the business of ship broker, said license being paid under schedule 121 of Section 361, Revenue Acts 1919. You also attach their affidavit stating that their business was exclusively interstate or foreign commerce.

It is true that in the recent case of State v. Richard Murray & Company, 183 So. 667, the Court of Appeals held that under the particular facts in that case, the Company was not liable for the license, the business being that of interstate commerce. It is of course true that every case must rest on the facts therein, and in my opinion you would not be authorized to accept an ex parte affidavit on a complicated question of law and fact such as interstate commerce.

Irrespective of what the proof might ultimately show, it appears that under the terms of the Budget Bill and the Appropriation Act repealing all appropriations except those therein set out, you are not authorized to pay claims of prior years out of current funds.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 20, 1934.

Hon. D. C. Mathews,
Superintendent of Education,
Grove Hill, Clarke County, Alabama.

Schools—Borrowing money under Section 130, School Code of 1927,
as amended by Act of 1931, page 279.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 28, 1934, in which you state the following facts:

"In 1932, the County Board of Education of Clarke County negotiated a loan against its state warrants. This loan is still outstanding, due to certain complications connected with the closed bank of Grove Hill. The state warrants are in excess of the loan by some \$15,000 (The actual loan being approximately \$25,000 and the amount of warrants pledged being \$40,000). For current operations this county still has some \$17,000 of unpaid taxes and appropriations from the state. Of course, this money will become available before January 1st, 1935 and the County Board wishes to negotiate a loan of some \$7,000 against it, but the Bank's attorney feels that the Board is without authority to negotiate such loan due to the fact that the obligation contracted in 1932 is still unpaid and constitutes approximately one-third of the cost of operations of the preceding year."

You request my opinion as to whether or not this outstanding loan, which is fully secured, will prevent a further borrowing of funds under Section 130, School Code of 1927 as amended by Acts of 1931, page 279.

I am of the opinion that your inquiry should be answered in the negative. The outstanding loan, being fully secured, will not, in my opinion, affect the power to borrow for the current year under Section 130, School Code of 1927 as amended by Acts of 1931, page 279. Said section, as amended, is for the purpose of authorizing the borrowing of funds for the current operating expenses; and any prior loan, which is fully secured, would have no effect on the authority contained therein.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1934.

Hon. W. H. Lee,
Judge of Probate, Lowndes County,
Hayneville, Alabama.

The amount of deed tax upon an instrument filed for record is to be based on the value of the property which must be ascertained by the Probate Judge.

Mortgages to Federal Land Banks not being subject to the mortgage privilege tax cannot be deducted from the value of the property in determining the amount of the deed filing tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 28, 1934, in which you ask my opinion as to the proper deed tax on instrument which you describe. You state that the tax value of this land is \$9.00 per acre and that the land has a mortgage to the Federal Land Bank upon it amounting to \$15,000.00.

It is the duty of the Probate Judge to ascertain the value of the property and fix the amount of the tax based on such value. This is a matter for you to determine and one which I cannot decide.

With reference to the deduction of the mortgage owing to the Federal Land Bank I advise that the statute allows only the deduction of mortgage upon which the privilege tax has been paid. Federal Land Bank mortgages are since the Crossland case exempt from privilege tax. Therefore the item of \$15,000 is not deductible from the value of the property as ascertained by you.

Yours truly,
THOMAS E. KNIGHT JR.,
Attorney General.

June 25, 1934.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

Long term leases are leases in excess of one year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter requesting me to advise you as to the meaning of long term leases such as are subject to the recording privilege tax.

Apply the statute of frauds, I would say leases for terms in excess of one year if otherwise subject to recording are long term leases as discussed in opinion dated May 13, 1927.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1934.

Mr. Clarence Byrd,
Notary Public, Ex Officio Justice of the Peace,
Beat 3, Covington County,
Opp, Alabama.

Act of 1931, page 259, authorizing the transfer of automobile tags applies to licenses issued on commercial cars.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 23, 1934, in which you state:

"Does the Act of 1931, set forth on pages 259-260 of the Acts of 1931, relative to transfer of automobile tags, have any application to an automobile for which a taxi license tag is purchased?"

In reply I beg to advise that the Act to which you refer provides that when any motor vehicle has been sold or transferred to a new owner or owners, the license tag shall remain on such motor vehicle. Such transfer shall be noted on the records of the Probate Judge.

Section 2 prohibits the transfer of such tag to another motor vehicle.

This language expressly prevents the transfer of the tag to a different motor vehicle from that for which issued.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1934

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Scholastic year and fiscal year; expenditure of funds.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 11, 1934 in which you request my opinion as to the legality of the County Board of Education expending funds to be collected during the fiscal year beginning October 1, 1934 for the purpose of sustaining expenses incurred in maintaining schools during August and September of 1934.

I am of the opinion that the expenditure in question would be proper.

Section 319, School Code of 1927 provides that the "scholastic year" shall begin the first day of July and end with the thirtieth day of June of each year.

Section 822, Code of Alabama, 1923 and Section 26 of the Budget and Financial Control Act provide that the "fiscal year" shall commence on the first day of October and end on the thirtieth day of September of each year.

Generally speaking, the "scholastic year" would have no bearing on the "fiscal year." However, the answer to your inquiry is specifically governed by that part of Section 319 of the School Code, supra, which reads as follows:

"So far as not prevented by the Constitution, any educational fund becoming available at any time during said scholastic year may be used to pay any obligation incurred during "said scholastic year, whether said fund became available during the same fiscal year as the obligation was incurred or not, provided such fund must be devoted to the particular purposes for which appropriated or made available."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1934.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Use of surplus from State Refunding Bonds.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 16, 1934 in which you state that the County Board of Education of Pike County has received from the State Comptroller \$40,631.16 in interest bearing warrants in exchange for non-interest bearing warrants issued by the state on the State Public School Fund of 1931-32. The County Board of Education has paid all of its debts and at present does not owe anything whatsoever. The County Board still has on hand in these interest bearing bonds a surplus of \$6,178.52.

You request my opinion as to whether or not it will be legal for the County Board of Education to use the proceeds of these bonds for public school purposes in general other than for paying the salaries of the teachers.

I am of the opinion that your inquiry should be answered in the affirmative.

A surplus in the form of State Refunding Bonds may be treated as cash and used to whatever legal purposes cash in the hands of the County Treasurer of School Funds may be expended.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1934.

Hon. A. F. Harmon,
Department of Education,
CAPITOL.

Schools—Issuing warrants against three mill county-wide school tax for building purposes.

Dear Sir:

I have your letter of June 6, 1934 in which you request my opinion as to whether or not it would be legal for the Fayette County Board of Education to issue warrants against the three mill county-wide school tax for the purpose of securing funds to apply on the erection of the Fayette County High School building which was destroyed by fire several months ago. You state that Fayette County High School has been consolidated with the Fayette Elementary School into one system as provided for by Section 464, of the Alabama School Code of 1927.

I am of the opinion that your inquiry should be answered in the affirmative.

Section 281, School Code of 1927, provides for the procedure necessary in this respect. Said section must be strictly followed.

This office has ruled that Section 281, *supra*, has not been affected by recent legislation or recent court decisions.—**Opinions Attorney General**, Book 16, page 170 (Off. Ed.)

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 26, 1934

Hon. J. M. Money,
Judge of Probate, Jackson County,
Scottsboro, Alabama.

Opinion by Assistant Attorney General Screws.

Counties—Payment of premium on bond of director or treasurer of Federal Relief Work.

Dear Sir:

I have your letter of June 8, 1934, in which you state that the director or treasurer of Federal Relief Work in your county is required to furnish bond as such director or treasurer. You request my opinion as to whether or not the county can legally pay the premium on such bond or bonds.

I am of the opinion that your inquiry should be answered in the affirmative, provided the Court of County Commissioners, Board of Revenue or other like governing body of the county considers same necessary for the protection of the public interest.

Act No. 191, H. B. 344, approved April 20, 1933 (General Acts 1933, page 203) deals with official bonds of persons intrusted with the custody of public funds.

Sections 18, 19 and 20 of said act provide as follows:

Section 18. That when in the judgment of the Court of County Commissioners, Board of Revenue or like governing body of any county it is considered necessary to the protection of the public interests, such governing body may require any county employee or any clerk, deputy or employee in any county office to give bond in such amount and with such surety as may be approved by said governing body, unless such bond is already provided for in this act.

Section 19. All bonds provided for in this Act may be made by a surety company or surety companies authorized by their charters to make such bonds provided they are qualified to do business in this State or may be made with individual sureties or banks or other corporations qualified to do business in this State and authorized under their charters to make such bonds.

Section 20. The premiums on all bonds provided for in this Act, when made by surety companies, shall be paid by the respective counties out of the general funds of said county, except that the premiums on the bonds of Superintendent of Education and of County Treasurer of public school funds shall be paid by the Board of Education of said County out of the three mill school tax and the premiums on all bonds of \$1000.00 or less shall be paid by the officer making said bond.

It follows that if the Court of County Commissioners, Board of Revenue or other like governing body of any county considers the bond of the director or treasurer of Federal Relief Work to be necessary for the protection of the public interest, the county is authorized to pay the premium on said bond or bonds.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 26, 1934.

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission.
CAPITOL.

1. Act approved October 7, 1932, not applicable to property assessable October 1, 1932.

2. Appointment of guardian under provisions of Acts 1931, page 280, providing for appointment of guardians for veterans, whom the Veterans Bureau deem incompetent, and for whom the Bureau requires a guardian, is not such an adjudication of insanity as to exempt from taxation the property of ward as authorized by Section 3022 of the Code as amended by House Bill 192, approved October 7, 1932.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date in which you state:

"We are receiving numerous inquiries from the Tax Assessors of the several counties in regard to the exemption allowed under the provisions of House Bill 192 by Morrow, approved October 7, 1932. We find it necessary to ask your opinion as to the following:

"1. Does the exemption of \$2,000 apply to those assessments required to be made for the tax year beginning October 1, 1932, and ending September 30, 1933? In asking this question we call your attention to the fact that the exemption which was authorized on October 1, 1932, was for \$100.00 in stead of \$2000.00, and call your attention to the further fact that the assessments for the tax year in question are required to be made as of October 1, 1932.

"2. Is a veteran of the World War for whom a guardian has been appointed under the provision of Senate Bill 104, approved June 6, 1931, and found on page 280 of the Acts of 1931, entitled to the exemption allowed to insane persons under the provisions of Section 3022 of the Code of Alabama as amended by House Bill 192 approved October 7, 1932, although there has been no determination of such insanity in accordance with Sections 8103 to 8119 of the Code of 1923?

In reply to question one, I advise that in my opinion the exemption of \$2000.00 authorized by the Act approved October 7, 1932, does not apply to property assessable as of October 1, 1932. The property was subject to assessment, prior to the approval of the Act, and the Act is not retroactive in my judgment.

My answer to your second question is in the negative. The exemption in Code Section 3022 is to "insane" persons. Under the Amendment approved October 7, 1932, the exemption is to "all persons who have been **legally** declared insane."

The Amendment is clearly a legislative interpretation of the word "insane" as appearing in Code Section 3022. "Insane" means those who have been legally declared insane."

The method of legally declaring persons to be insane is found in Sections 8104 and 8109, inclusive. It provides for inquisition and verdict of a jury.

Act No. 240, approved June 6, 1931 (Acts 1931, page 280) providing for the appointment of guardians of incompetent verterans when required by the United States Veterans Bureau ,in my opinion does not provide for an adjudication of insanity in the legal sense of the word. It is a method of appointing a guardian to meet the requirements of the Veterans Bureau.

Section 17 of said Act expressly states:

"This Act shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Bureau.

This clearly limits the effect as well as the purpose of the Act.

I am, therefore, of the opinion that a hearing or appointment under this Act alone will not suffice to exempt the property of the ward from taxation. To authorize the exemption, there must be a compliance with Section 8104 to 8109 of the Code.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 26, 1934.

Hon. A. G. Teague,
Clerk of the Circuit Court,
Ashville, St. Clair County, Ala.

Clerk's fee for issuing subpoenas for witness to attend before the grand jury—Costs—How paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 13, 1934 in which you request my opinion as follows:

"I notice in your ruling to Sheriff Griffin in Gadsden, that you hold the Sheriff is entitled to pay for summoning grand jury witnesses in cases where no indictment is found.

"Kindly give me your opinion on whether the Clerk of the Circuit Court is entitled to pay for issuing these subpoenas in such cases."

In answer to the above, the same rule applies to you as Clerk of the Circuit Court. In other words, where you issue subpoenas for witnesses under the present law to attend before the grand jury and no indictment is found, you, like the Sheriff, would be permitted to collect your costs for this service out of the Fine and Forfeiture Fund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 26, 1934

Hon R. C. Phelps,
Tax Collector, Montgomery County,
Montgomery, Alabama.

Under Sections 44 to 52 of the Revenue Act of 1927, as amended by House Bill 262, approved April 20, 1933, securities must be listed by the serial number appearing thereon. If such serial number be changed, a new listing is necessary in order to obtain the benefits of the Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 24, 1934, enclosing the following statement on which you ask an opinion:

"On September 21, 1929, Mr. Guy R. Brightwell filed with the State Tax Commission a list of his securities in accordance with the provisions of Sections 44 to 52 of House Bill 359, Acts 1927, approved July 22, 1927, as amended by House Bill 242, Acts 1933, approved April 20, 1933, relating to record of ownership of securities which said Act was held constitutional by the Supreme Court of Alabama, June 6, 1929, in the case of Lee vs. State Tax Commission, 219 Ala. 813.

"Mr. Brightwell listed 25 shares of preferred stock of the Gold Dust Corporation and listed as the serial a temporary number which was given him by the Gold Dust Corporation. This stock was registered with the Tax Commission under a temporary number and was so designated as temporary on the list filed and same was accepted by the Tax Commission as listed. Some few months subsequent to this registration the Gold Dust Corporation issued to Mr. Brightwell a permanent serial number of the same stock.

"Under Section 50 of the above Act I quote as follows:

" 'The recording in the office of the State Tax Commission of any such list of securities shall operate as a notice of the contents of such list of securities and the claim of ownership of the securities therein listed from the date of the filing of the same for record to all persons and parties in the State of Alabama whomsoever, except only purchasers and pledges for value in the ordinary course of business, until such time as such ownership may cease by legal transfer and delivery to some other party by the owner by or on whose account such list has been filed for record.'

"Mr. Brightwell did not transfer this stock nor did he exchange it for any other stock. It remained the same stock that was issued him by this corporation originally. The serial number was changed from temporary to a permanent one by an Act of the Corporation through no fault on the part of Mr. Brightwell.

"The question involved is whether Mr. Brightwell should be required to pay registration on this same stock for the second time or whether his prior listing is sufficient under the Act referred to above."

Section 45 of the Revenue Act of 1927, Acts 1927, page 174, provides in part:

"Any such list shall state the names of the corporations or government which issued the respective securities listed, shall describe the nature of each security listed, shall state the number and amount of each class of securities described and shall identify the same by the serial number appearing thereon."

It will therefore be seen that such securities must be listed according to the serial number appearing thereon. If securities with different serial numbers are issued, then a new registration is necessary in order to obtain the benefits of the Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 6, 1934.

Hon. L. H. Reynolds,
Judge of Probate, Chilton County,
Clanton, Alabama.

Counties—Use of county gasoline in cars of road hands.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 16, 1934, in which you state that Chilton County buys gasoline without the payment of the state tax, which is used in tractors in working the roads.

You request my opinion as to whether or not it is legal for this gasoline to be used in the cars of the road hands in going to and from their work on the roads.

I am of the opinion that your inquiry should be answered in the negative. Such use would be a private use of the gasoline and would have the effect of increasing the compensation or remuneration that would be received.—See **Opinion of the Attorney General**, Book 14, page 76 (Off. Ed.)

However, if the road hands are carried to their work at the county's expense, the use of the county gasoline would be proper.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 27, 1934.

Hon. Hodges Grow,
Tax Collector,
Decatur, Alabama.

Tax Collector can levy on any property of a taxpayer liable for taxes which he can locate in the County.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date in which you make the following inquiries:

“(1) When the assessed property has been removed or sold, can we attach other property owned by the person or firm to whom the escaped assessment was made? Cotton for instance.

"(2) Then shares of stocks and bonds which we cannot get hold of. Can we levy on stocks and bonds without getting possession of them?"

"(3) Then goods on consignments, where the goods have all been sold and moved?"

In answer to question 1, I advise that you can levy on any property of the person liable for the taxes which you can find.

In answer to question 2, I call your attention to Section 3066 of the Code of 1923 which fully answers your question.

In answer to question 3, you can levy on any property of the taxpayer liable for the taxes which you can find in your County. In this connection I call to your attention Section 3077 of the Code requiring the Tax Collector to levy on property about to be disposed of.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 27, 1934.

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Depts.,
State Tax Commission,
CAPITOL.

Where slot machine on which license has been paid is moved to different place, operated by a person or firm different from that where originally licensed, new license is required.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 2, 1934, in which you state:

"We enclose copy of a letter from Monarch Sales Company, Inc., from which you will note that it is the opinion of the said Company that if a license has been bought for a slot device or machine under Schedule 73, Section 361, page 282, Acts of 1919, that the said slot device or machine can be moved from the location for which the license was bought to another location in the same county without a new license being required under the law.

"The pertinent part of Schedule 73, supra, provides as follows:

"The license shall be due and payable by the person, owner or proprietor of the establishment, store or place of business in or at which such slot machine is located and the State shall have a lien for the payment of such license upon such machine, which lien may be enforced by attachment.'

"It is the opinion of this Commission, and we have so instructed State and County License Inspectors, that the license must be issued to the party named in the Schedule and that when the machine is moved to another location in the same County and placed in the establishment, store or place of business of a person, owner or proprietor other than the one to whom it was first issued, a new license would be required but that if the owner or proprietor of the establishment, store or place of business should move their place to another location in the same county, that he may take the slot machine with him and place it in the new place of business without the payment of additional license.

"O. A. G. 1925-1928, page 172.

"Please advise if we are correct in our opinion and instructions given State and County License Inspectors.

In my opinion you have correctly advised your License Inspectors.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1934.

Hon. J. H. Hard, Jr.,
State Comptroller,
CAPITOL.

1. Laws relating to qualification and payment of taxes by foreign corporations doing business in Alabama are not changed by Section 21 Acts 1932, page 183.

2. If fee required by Section 21 is paid there is no liability for the fee set out in Section 7210 of the Code.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 12, 1934, in which you state:

"Please refer to General Acts of Alabama, 1907, and to an Act of the Legislature approved March 7, 1907 found at page 422 et seq. and to Article 26 of the Code of Alabama 1923, Vol. 3, pages 566, 572, Sections 7209—7220, and to General Acts of Alabama, Extra Session 1932, Article V., Section 21, page 183, and to the Constitution of Alabama, Sections 232 and 221 and to General Acts of Alabama, 1927, and an Act of the Legislature approved July 22, 1927, found at pages 139, 187, 42 and particularly to Sections 54 and 69 of said Act, and advise me on the following matter of inquiry.

"Where a foreign corporation has **not** been admitted to do business in the State under the Act of the Legislature of 1907, or under the Code—Sections mentioned—as to payment of admission fees—and has not particularly complied with the requirements of Sections 7200 and 7210 of the Code—as to filing certified copy of its articles of incorporation and as to paying filing fee on filing of such instrument—and has not met the requirements of law as set forth in the Acts of the Legislature of 1907—concerning permit fee and report to State Tax Commission—relative to its payment of annual franchise tax—is such foreign corporation by the payment only of the fee as prescribed in the Act of the Legislature, Extra Session 1932, to which reference has been made, authorized to do business in the State without having met the other requirements of law applying generally to foreign corporation and to which reference above is made?

"Is a foreign corporation engaged in the business as referred to in the Act of 1932, by the payment of the fee prescribed in Section 21 of said Act, relieved or exempted from paying filing fee on filing copy of its article of incorporation or on filing a statement as to change of agent, etc., under Section 7209 and 7210 of the Code, or from paying permit fee and franchise tax under Act of the Legislature of 1927, or from paying admission fees as required of any and all corporations qualifying to do business in the State, irrespective of the particular business in which foreign corporations can legally engage in this State."

In reply I beg to advise that if a foreign corporation is "**doing business in Alabama**" it is my opinion that the various provisions of law relative to qualifications and payment of franchise tax apply. There is nothing in Section 21, Acts 1932, page 183, which changes the requirements of the constitutional proviso and the statutes which you cite.

Nor is it my opinion that said Section 21 changes the liability for the annual permit fee required by law to be paid to the State Tax Commission. I am of the opinion that the instrument in writing required by Section 7209 of the Code must be filed, but the fee required by Section 7210 is sub-

stantially the same as that required by Section 21 of the 1932 Act, and I am of the opinion that only one fee of \$10.00 is required under these two provisos.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1934.

Hon. James H. Hard, Jr.,
State Comptroller,
CAPITOL.

Tax Collector, under Section 246, Acts 1919, page 282, has the sole right to select the newspaper in which legal notices relating to the sale of land for taxes shall be published, and so long as the rate fixed in Section 250 of the 1919 Revenue Act is not exceeded, he acts within the power given him by law.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 21, 1934, with reference to advertisements for sale of lands for taxes. You call my attention to Section 255, and Section 259 of the 1929 Revenue Compilation, and also Section 9262 of the Code of Alabama, 1923. You suggest that a paper of large circulation in Mobile County has filed a bid with the Tax Collector or has informed the Tax Collector that it will publish the three weeks notice required by law to be published for the total sum of one and one-half cents per word, whereas the statute permits a maximum for such publication of three and one-half cents per word.

You ask if, under such circumstances, the Tax Collector is not required to accept bids for such publication. You also ask the application of Section 9262 of the Code.

In reply I advise that in my opinion Section 9262 has no reference to taxes, that subject being specifically covered by said Sections 255 and 259 of the Revenue Compilation of 1929, being Sections 246 and 250 of the Revenue Act of 1919.

I am likewise of the opinion that Section 255 places the power of selecting the newspaper in the Tax Collector and so long as the rate fixed by

Section 259, to-wit, one and one-half cents per word for the first insertion and one cent per word for each subsequent insertion is not exceeded, the matter is one entirely within his power and discretion.

While under the facts set out by you this may be unfortunate and the Tax Collector should give every consideration to saving the State and ultimately the taxpayers upon redemption and presumably will do so, yet the statute gives him the power of selection, and I know of no statutory authority to review or alter the selection made by him.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1934.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

Probate Judge should make settlement of funds coming into his possession with the various State agencies to which such funds belong. He is not authorized to offset previous years' overpayments or underpayments to any agency out of funds coming into his hands during the current year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 19, 1934 in which you state:

"The books of this office were audited by Mr. B. P. Singleton, State Examiner of Accounts, covering a period from August 27, 1931, to May 31, 1933. This audit has been filed with the State Comptroller.

"As shown by the audit, due to a misconstruction of the land redemption laws, started in 1922, the Probate Judge's commission on tax redemptions was deducted in full from the County general funds, and no deductions were made from the County school fund, and all interest accruing to benefit of the County school fund was remitted to the County general fund. The audit shows that during the period in question this office underpaid the County school fund a net amount of \$948.74. Please advise whether or not this amount may be adjusted by deducting this

sum from the amount due the County general fund on current redemption and paid over to the County school fund, without reference to the tax years involved.

"At the time of the audit in question, an audit was made covering the period from the last prior audit in 1926 to August 27, 1931, during which time the Hon. J. P. Stiles, was Judge of Probate of Jefferson County. This audit shows that on the same basis the County school fund was overpaid and the County general fund was underpaid during that period, approximately \$5000.00. Please advise whether or not I am authorized to deduct the correct amount due the County school fund on current redemptions, and pay that amount over to the County General Fund, in order to adjust this difference."

In reply I beg to advise that in an opinion rendered to Hon. W. D. Bishop, President of the County Commission of Jefferson County under date of July 31, 1933, it was held among other things as follows:

"Section 3117 (Code of Alabama, 1923). Redemption money must be promptly paid over, also no commission allowed; quarterly reports—When lands which have been bid in by the State are redeemed, the Judge of Probate must, during the month in which such redemption is made, remit to the State Treasurer, at the expense of the State, the proportion of the redemption money belonging to the State, and pay into the county treasury the proportion of such money belonging to the County, and to the proper authorities the proportion belonging to the school fund, if any; and upon all such money so paid over during the month of collection, he is entitled to commission at the rate of two and one-half per cent which he may deduct therefrom, but he shall not be allowed any commission on any money not so paid over; and on the last business day of each month the Judge of Probate shall certify to the Auditor and to the County Treasurer, upon blanks to be furnished by the Auditor, a full and correct statement of all real estate bid in by the State and redeemed, showing separately the amount of State, County and school taxes and penalties and costs received by him on such redemption, and if no lands have been redeemed, he shall report that fact."

"It will be seen from this Section that the Judge of Probate must, during the month in which a redemption is made, remit to the State Treasurer, at the expense of the State, the proportion of the redemption money belonging to the State, and pay into the County Treasury the proportion of such money belonging to the County, and to the proper authorities the proportion to the School Fund, if any; and 'upon all such money so paid over during the month of collection, he is entitled to commission at the rate of two and one-half per cent, which he may deduct therefrom, but he shall not be allowed any commission on any money not so paid over:

"It will be seen from the above that the Judge of Probate is entitled to deduct from the money paid over to the State, the County and the proper authorities for the school, during the month of collection, two and one-half per cent as his commission. He is not entitled to deduct any on money not so paid over."

In *Shelton vs. Blount County*, 202 Ala. 620, it was held, headnote 2:

"Taxes collected for one year cannot be applied as a credit on a fund due to be accounted for by a Tax Collector for any other year, but must be paid and credited as for the year for which they were collected."

In the body of the opinion it was stated:

"We must presume that the defendant tax collector discharged this duty as prescribed by law, and it seems clear that his account for the tax year of 1914 was thereby effectually detached from his account for the ensuing year, and that those accounts were in no sense single or continuous. In line with this theory, it has been held that the taxes collected for one year cannot be applied as a credit on the fund due to be accounted for by the tax collector for any other year, but must be paid and credited as for the year for which they were collected. *State, use of Winston County vs. Tingle, Tax Collector*, 196 Ala. 505, 71 So. 991.

"It would seem, therefore, that a tax collector's mistaken excess payment to the county treasurer, over and above what he is accountable for for that year, if officially paid and received as taxes and added to the county funds, becomes a distinct claim for money had, and received by the County to the use of the collector. If so, we can discover no good reason why it should not have been presented to the court or county commissioners for allowance or rejection, as required by Code, Section 147. Whatever defendants may call the plea setting up such a claim, it is really a cross-claim and is governed by the Code, Section 2472, which forbids suit against a county until the claim sued on has been duly presented to the commissioners court and unfavorably acted upon. 11 Cyc. 454, citing *State vs. Banks*, 66 Miss. 431, 6 So. 184; *Botetourt County vs. Burger*, 86 Va. 530, 10 S. E. 264.

"Apart from this consideration, however, we are strongly persuaded that in suits like this a sound public policy forbids the entertainment of such a defense. It would permit the easy evasion of the mandatory duty imposed by the statute on tax collectors (Code, Sections 2200, 2204), and it would be impossible for the county authorities to know in advance how much of the year's taxes might be withheld by the collector, or upon what claims or pretenses he might act. It would certainly tend to uncertainty and confusion and to a dangerous laxity in a vital department of administrative government."

This case together with that of the cited authority—Winston County vs. Tingle, Tax Collector, 196 Ala. 505—very clearly hold that each year is a distinct entity and that an overpayment in one year cannot be offset against the collection for a subsequent year.

Therefore I am of the opinion that the Probate Judge should pay to the proper County authorities all moneys due the County and to the proper school authorities all money due the School Fund and that the adjustment of the counter claims between these two agencies be handled directly. In other words, the County should file a claim with the school authorities for the amount due it by the school funds and the school authorities should file with the County claim for whatever amount the County is due the school fund. I do not think that the Probate Judge is authorized to make such offset in his settlements under the authority of the foregoing cases.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1934.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

(Attention: Mr. William F. Black)

Construction of certain parts of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932, (General Acts of Alabama, Extra Session, 1932, p. 178).

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of November 17, 1933. Your letter follows:

"The Commission desires a ruling on the following questions: Reference to the Tidwell Act and to motor-carrier permits in these questions mean an Act of the Legislature approved October 28, 1932, General Acts of Alabama, Extra Session 1932, page 178, Act No. 159:

"1. A charters a Greyhound bus for a trip from Montgomery to a point out of this State. A is promoting the trip and desires to use a bus in transporting some of his passengers to Montgomery. Others will meet him there and all of them will make the trip on a chartered

bus of a qualified carrier or on a railroad coach. **A** is to collect a certain amount per passenger which is to cover transportation and hotel bills, and this charge will be the same whether he transports the passengers to Montgomery or whether they meet him there. Can **A** do this without subjecting himself to the Tidwell Act?

"2. **A** desires to make occasional trips from Brewton, Alabama, to various points in the State, particularly in taking groups of persons to football games in other cities. **A** does not desire to maintain any regular schedule, but wishes to maintain his bus for such trips as he might arrange. Will such operations be subject to the Tidwell Act?

"3. **A**, the owner of a motor bus and a school teacher, proposes to take a group of boys on a tour to last several months, which tour will take him into the State of Florida, from his home in Alabama, then up the Atlantic Coast visiting points of interest in Virginia, the Carolinas, etc. The proposed trip will take him into Canada and back to his original starting point via another route. En route he proposes to conduct classes, the points to be visited to be connected up with the subject to be studied. Several teachers will be along and **A** proposes to carry two or three grades, school credit being given for work done. The plan is in the nature of a camping school, or, as it is called in Wichita, Kansas, an 'Omnibus College.' **A** desires to begin such trip upon the closing of the high schools in his community. Briefly, the plan includes, besides regular classes, camping, recreation, and visits to points of interest. Will **A** have to obtain a motor-carrier permit in this State to carry on these operations?"

Answering your first inquiry, the Alabama Contract-Common Carrier Motor Vehicle Act of 1932 (General Acts of Alabama Extra Session, 1932, p. 178, defines (Section 1) a contract carrier to mean "any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public. The word "operator" is defined to mean "any person, firm, partnership, association, joint stock company, corporation, lessee, trustee or receiver appointed by any court whatsoever **owning, controlling, operating, or managing** any motor vehicle used for the transportation of persons or property for hire."

The word "**charter**" in a transportation sense, is ordinarily referable to the operation of ships. It has a well-defined meaning in that connection.—The **Harvey & Henry** 86 Fed. 656; The **New York**, 93 Fed. 497; **Spring v Gray**, 6 Fet. 151, 8 L. Ed. 352. It seems that there are two kinds of charters—one which lets the whole of a ship to a merchant or other person for a particular voyage and the other which lets only a part of a ship for such purpose.—3 **Kent** Com. 201. In this particular instance, I think that if the owner of the bus charters (that is, leases or rents) it to **A** so that, for the time being, **A** is responsible for its operation, **A** would be subject to the terms and conditions of the Alabama Contract-Common Carrier Motor Ve-

hicle Act of 1932 unless he can lawfully claim the benefit of one of the exceptions contained in Section 1 or an exemption in Section 2. The facts stated in connection with your first inquiry do not indicate that A would be entitled to any exception or exemption in the Act. On the other hand, if the bus were operated under the control or management of the owner the responsibility for qualifying under the Act would rest with him and not with A.

As to your second inquiry, unless A comes within one of the exceptions in Section 1 of the Alabama Contract-Common Carrier Act of 1932 or one of the exemptions in Section 2 thereof his operations would be subject to the Act and he would have to qualify thereunder.

Insofar as your third inquiry is concerned, I think that if the transportation is of students belonging to a school, whether it be a school of the orthodox variety or one which is conducted on the vehicle itself, which you refer to as an "Omnibus College," it would not come within the purview of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932. This Act does not seek to regulate any sort of transportation except that which is carried on for hire. Furthermore, the exemption contained in Section 2 would probably be construed to include such a form of transportation. I am assuming, in giving this opinion, that the conducting of the school would constitute the major part of the transaction and that the transportation service is a necessary incident of the school work and confined exclusively to students and teachers.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General .

June 29, 1934.

Hon. J. D. Wright,
County Treasurer, Conecuh Co.,
Evergreen, Alabama.

Claims against the Fine and Forfeiture Fund must be paid according to registration and preferment.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 27, 1933, in which you request my opinion as follows:

"Does Section 303, subdivision 5, of the Code of 1923 govern the payment of witness certificates out of the Fine and Forfeiture Fund, and

if so, must witness fees collected in any case be deposited in the Fine and Forfeiture Fund? Section 303 subdivision 5 provides that all claims against the fine and forfeiture fund need not be allowed by the County Commissioners or Board of Revenue, but must be registered by the Treasurer. This section also provides that the Treasurer must pay the registered claims of State witnesses in the order of their registration (out of the fine and forfeiture fund).

"Section 303 subdivision 5 is perfectly clear to me if this Section of the law governs the payment of witness certificates, but must I keep the witness fees collected in some cases in a separate account or must such fees be deposited with or in the fine and forfeiture fund. This is the one particular point I would like to get cleared up."

It is my opinion under Section 303, subsection 5, Code of Alabama, 1923, you should place all moneys belonging to the Fine and Forfeiture Fund in one account, and see that you have enough money to pay all registered witness claims against such fund before paying other claims enumerated in said section. Under this section State witness fees are made preferred, and, of course, must be paid first, as stated above. This subsection reads as follows:

"5. To number and register, in the order in which they are presented, all claims against the fine and forfeiture fund which have been duly authenticated as claims against such fund, and without being audited and allowed by the court of county commissioners, such register showing the number of the claim, the date presented for registration, to whom payable, when it accrued, the character of the claim and the amount thereof; and to pay the registered claims of state witnesses in the order of their registration, and whenever there is a surplus of such fund, over and above the sum required to pay the registered claims of state witnesses, he must apply such surplus to the payment of the claims of officers of court in the order of their registration. All local laws in conflict herewith are hereby expressly repealed."

Claims against this fund must be paid according to registration.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1934.

Hon. Alex Brantley,
Judge of Probate, Pike County,
Troy, Alabama.

Montgomery Production Credit Association, an agency of the United State Government, not subject to mortgage privilege recording tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Montgomery Production Credit Association of Montgomery, Alabama, is filing Crop and Chattel mortgages in my office for record.

"I understand that this Association is a U. S. Government Corporation and not subject to the tax on its mortgages.

"Your official opinion is requested as to whether I should collect a mortgage tax on these instruments or not.

"As these loans will be held up and the farmers made to suffer from the delays, I will thank you to answer this inquiry as quickly as possible."

If, as you state, this is an agency of the United States Government, which fact I understand to be true, then in my opinion the mortgages filed by it are not subject to the mortgage privilege tax.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1934

Mr. J. R. Gamble, Chief Clerk,
Automobile & License Depts.,
State Tax Commission,
CAPITOL.

National Bank held not exempt from license tax on motor vehicles owned by it and used on the roads and streets of this State.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 23rd in which you ask if in my opinion an automobile owned by a National Bank is exempt from license tax when the same is used exclusively for the official purpose of such National Bank.

In reply I beg to advise that the license tax on a motor vehicle is for the privilege of using it on the public roads and streets of the State. It is my opinion that this matter is one both within the police and taxing power of

the State. Therefore those using the public roads and streets of the State are subject to the conditions which the State puts upon their use. It is therefore my opinion that if the National Bank uses its motor vehicles on the public roads or streets of the State, it is liable for the motor vehicle license required.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 2, 1934.

Hon. B. L. Malone,
Judge of Probate, Morgan County,
Decatur, Alabama.

Counties—Payment of office rent and expenses of National Re-employment Service.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have several letters which request that I render you an opinion concerning the authority of the County Board of Revenue of Morgan County to furnish the National Reemployment Service of the United States, with quarters including rentals for telephone and typewriters. It is stated that this service is cooperative and directly beneficial to the county in relieving the unemployment situation.

I am of the opinion that your inquiry should be answered in the affirmative. Section 6 of Section 6755, Code of Alabama, 1923, as amended by Acts 1931, page 759, authorizes the Court of County Commissioners, Board of Revenue or other like governing body to make such rules and regulations for the support of the poor of the county as are not inconsistent with any law of the state. Said provision, in my opinion, is sufficiently broad to cover the expenditure in question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 2, 1934.

Hon. J. M. McCleod,
Judge of Probate,
Camden, Wilcox County, Alabama.

Counties are authorized to build convict camps for the housing of convicts who are to be used exclusively in building, maintaining and repairing highways, roads and bridges of the various counties out of the gasoline funds.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 9, 1934 in which you request my opinion as follows:

"Please advise if the Court of County Commissioners of Wilcox County has the authority to purchase land for location of Convict Camp for the State out of County's gas tax funds. This camp is to be used for maintaining the County's roads for the State."

It is my opinion that your County would be authorized to build camp for convicts out of the gasoline funds where the convicts are to be used for building, maintaining or repairing public highways of the county. I call your attention to the Act approved August 27, 1927 (General Acts 1927, p. 328) amending the 1923 gasoline tax statute, which Act in dealing with the expenditure of said fund, provides in part as follows:

"Provided that all the funds derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said counties."

Therefore, it is my opinion that the building of these camps for the purpose set out in your request, would be a part of the maintenance and repair of roads, highways and bridges of your County, or incidental to such work.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 2, 1934.

Hon. Archie L. Faulk, Chairman,
Geneva County Board of Education,
Samson, Alabama.

County Superintendent of Education assumes office as soon after election as he is qualified.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of June 15, 1934 in which you ask my opinion on the following matter.

You state that a successor of the present County Superintendent of Education of Geneva County has been nominated and will be elected at the general election to be held in November of 1934.

You ask my opinion as to when said successor or nominee will take office.

I refer you to Section 2 of Act No. 13, H. B. 5 (Local Acts 1931, p. 5) which is as follows:

"2. That immediately after the passage of this Act, a special election shall be called, by the Probate Judge of Geneva County, and held in Geneva County, Alabama, the expenses thereof to be paid out of the general funds of said County, for the purpose of electing a County Superintendent of Education for said County, by the qualified electors thereof, who shall assume the duties of his office July 1, 1931, and shall hold office until his successor is elected and qualified, at the General Election to be held on the second Tuesday in November, 1934, at which time his successor in office shall be elected, and thereafter the Superintendent of Education of Geneva County, shall be elected quadrennial, and hold office for a term of four years, unless removed for good cause, nominations for this office shall be made in the Primary Elections as provided for the other County offices."

This act distinctly provides that the newly elected Superintendent of Education shall assume the duties of his office immediately after the General Election. Of course, a few days must be granted said nominee in which to comply with the requirements of the statute as to making certain qualifications. I refer you to the case of *Prowell vs. State*, 39 So. 164, wherein the court held as follows:

"Unless some other time is fixed for the beginning of the term of office, the general presumption is that it dates from the legal ascertainment of the result of the election and the officer assumes the duties of his office as soon thereafter as he can qualify and receive his commission."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 5, 1934.

Mr. W. A. Berry, President,
Jefferson County Board of Education
Birmingham, Alabama.

Waiver of interest on deferred installments of premium on insurance policy is not discriminatory and does not invalidate the contract of insurance, as violative of Section 8371, Code of Alabama of 1923, prohibiting secret rebates and inducements not specified in the policy.

Opinion by Assistant Attorney-General Carmichael.

Dear Sir:

I have your letter of June 27, 1934, in which you state:

"The Jefferson County Board of Education has struggled for the past several years to keep the schools open and meet the payrolls. It has become necessary to economize in every way possible.

"The cost of fire insurance coverage has been a considerable item and the Board unanimously decided to ask for bids on our fire insurance with the hope of reducing the cost. We asked for bids on a five year policy payable one-fifth cash, and a like amount for each of the four remaining years, with warrants or notes to be used in making settlement of deferred payments to agents.

"We received bids from the local insurance exchange and many of the prominent agents, which bids varied in respect to policy forms, rates and interest charges. It seemed that the mutual companies were the low bidders and the Board voted three for the stock companies and two for the mutuals. The business was placed with the Leedy-Glover Agency as they agreed to take warrants or notes payable in one, two, three and four years without interest, or for such nominal interest as would make their proposition legal. The Leedy-Glover bid was practically as good as to net cost as the figures of mutual companies.

"We understand the State of Alabama has placed insurance on the same plan pretty much as the Leedy-Glover bid. And I know of another local corporation that has placed its insurance on the same plan, and there was no question raised as to the legality of the transaction.

"Should it be illegal for an agency to carry our insurance account without interest. Just what minimum interest rate would be legal? I think you are more or less familiar with our case, and I trust you can give us an opinion on it at an early date.

"We feel confident that you are familiar with our struggle to finance the operation of the schools for the full term, and can sympathize with us in the efforts we are making to carry on for the thirty-five thousand children we are trying to serve. We know that you would expect our Board to avail itself of every opportunity to effect economy in these trying times.

"We thank you in advance for your assistance and cooperation.

Yours very truly,
(a) W. A. BERRY,
Jefferson County Board
of Education."

We take it that your inquiry is addressed to the question whether the waiver of interest on deferred installments of a premium on a contract of insurance is violative of any of the provisions of Section 8371 of the Code of Alabama of 1923. Code Section 8371 is in the following language:

"Contracts of insurance to be in plain language, free from ambiguity; Rebates on premiums prohibited. Penalty—No life, nor any other insurance company, nor any agent thereof, shall make any contract of insurance, or agreement as to policy contract, other than is plainly expressed in the policy issued thereon; nor shall any such company or agent pay or allow, or offer to pay or allow, as inducement to insurance, any rebate of premiums payable on the policy, nor shall any particular policy holder of the same class be allowed any advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance."

It may be said at the outset that there is no statutory inhibition in Alabama, against the waiver of interest on deferred payments of premiums on policies of insurance so that, the question resolves itself into the one inquiry viz: Does such waiver of interest constitute such a rebate or inducement within the contemplation of Section 8371 of the Code of Alabama, as is required to be specified in the policy contract itself; or in other words, does the acceptance of notes or school warrants, without interest, for defer-

red installments of the premium, render the contract of insurance illegal and invalid? Our answer is in the negative.

In approaching this inquiry, we must first ascertain if such waiver of interest constitutes a "rebate" or "inducement" within the contemplation of that statute, for if we find that such waiver is not a "rebate," or "inducement," within the contemplation of that statute, our inquiry stops there, and it is unnecessary for us to consider the necessity of the fact of each waiver being specified on the face of the policy contract.

In the case of Amarillo National Life Insurance Company vs. Brown (Texas) 166 S. W. 634, the suit was filed by Martha Brown, widow of Willie Brown, against the Amarillo Life Insurance Company, to recover on a policy of life insurance on the life of her deceased husband. The agent of the company took the application of the assured, and a note for the first premium, and forwarded the application to the company. The company issued a different form of policy from that for which the application was made, and at a higher premium rate, and the assured was notified and agreed to accept said policy, and promised to call at the office of the agent and get the policy and "make it all right about the additional premium." The assured died before calling for the policy, or making any arrangement about the premium. A note had been given for the premium at the time of the execution of the original application. The appellant contended that the extension of credit to the assured was a violation of the statute, and resulted in a violation of the policy. The statute in question, Article 4741, R. D. 1911, provides that no policy of life insurance shall be issued or delivered in this state unless the contract shall contain a provision substantially that all premiums shall be payable in advance, either at the home office of the company, or to an agent of the company upon a delivery of the receipt signed by one or more of the officers, who are designated in the policy, and the statute required a further provision in the policy that the policy, or the policy and the application, shall constitute the entire contract between the parties. These provisions were in the policy under consideration in that case.

In speaking of the question, the Court used the following language:

"Article 4954 is a provision aimed at the prevention of insurance companies discriminating between insureds of the same class, and of equal expectation of life in the amount of payment of the premium to be charged for such insurance; also the statute requires that life insurance companies, or their agents shall not make any contract of insurance, or agreement other than as expressed in the policy issued thereon, providing for a punitive penalty by criminal prosecution, and an additional penalty of forfeiture of its certificate of authority to do business in the State. We are not prone to believe that the provisions of the statute were intended to prevent an extension of credit, where insurance companies thought it expedient to do so, in payment of premiums for such contract. * * * We are not inclined to think that these statutes contemplated a well known method pursued by insurance companies was to be prohibited to them in the conduct of their business."

In the case of MacDonald vs. Calkins, 251 Pacific 458, we find a case in point and conclusive of the position we have taken here. The pertinent parts of the statute there under consideration are almost identical with Section 8371 of the Code of Alabama of 1923. In that case one Calkins brought suit against one MacDonald for the balance due on a promissory note. The evidence shows that the plaintiff was the agent of the Occidental Life Insurance Company, and induced defendant to take the policy of insurance, and at the time the application was made the defendant gave the plaintiff a note for the premium, without interest, said note being payable in two installments. The first installment was paid at its maturity, but the second was not, and the defendant sought a cancellation of the policy, which the company declined; whereupon, suit was filed on the note. The defendant contended that the acceptance of the note without interest was a discrimination contrary to the provisions of paragraph 3449 R. F. A. 1913, Civil Code. This statute so far as pertinent here is as follows:

"3449. No life insurance company doing business in this State shall make or permit any distinction or discrimination in favor of individuals between insurance of the same class and equal expectation of life, in the amount or payment of premiums, or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contract it makes; nor shall any such company, or any agent thereof, make any contract of insurance or agreement as to such contract, other than as plainly expressed in the policy issued thereon; nor shall any company or agent pay or allow, or offer to pay or allow as an inducement, any rebate of premiums payable on the policy, or any special favors or advantages of the dividends, or other benefits thereon, or other valuable considerations or inducements not specified in the policy contract of insurance. * * *".

The Court is speaking of the question that we have here under consideration used the following language, which is so applicable to the case we have under consideration that we are quoting from same at length:

"There are many states with statutes to the same effect as ours above quoted, and it has been held with practical uniformity that no action could be maintained upon a contract violating the law. Is, however, the taking of a note without interest as payment of a premium, within the statute? It is generally held that an insurance company may authorize its agents to accept notes rather than cash in payment of a premium of insurance in the absence of a statute forbidding it. 32 C. J. 1201. In fact, paragraph 3460, H. S. A. 1913 Civil Code, impliedly, although not directly, recognizes that this practice is valid. If this be true, it would appear that since the note in question was for exactly the same amount of premium as would be charged any other applicant of the same age, there was no discrimination. Neither the statute nor any provision of the application or policy, so far as we are informed, requires that any interest shall be paid upon a premium note. While

defendant does not so state in express words, the implication of his argument seems to be that since the present value of a note without interest, due some time after its date of execution, is presumably less than its face value, there is a discrimination between a cash payment and one made by a non-interest bearing note.

"Assuming that there is a difference in the present value of the two forms of payment, how could it be made certain that a note bearing any assigned rate of interest whatsoever would be equal in its present value in cash the amount of its face? It is a well-known fact that the discount rates of banks vary from time to time and are even different for different makers of notes, and the present value of notes presented for discount varies accordingly, even though they bear the same rate of interest and run for the same time, to say nothing of the standing of their makers. What rate of interest, then, must we assume a note should bear, so that its present value will always equal exactly its face? It is apparently argued by defendant that the note should carry the statutory rate of 6 per cent, as on judgments, and similar obligations. If, however, we hold this to be the correct and, necessarily, the only permissible rate of interest, if the discount rate is more than 6 per cent, the present value of such a note is less than its face, while if the discount rate should for some reason drop below 6 per cent, then its present value is greater, and it is again a discrimination between a cash payment and one in the form of a note. The only method whereby a note could be made exactly equal in value to a cash premium would be by the agent and the maker going to some bank in advance and having a note made and actually discounted, of such a form and for such amount and rate of interest as the bank at that particular time would pay the amount of the regular premium for, and turning the money over to the insurance company. But this would, of course, be in reality a cash premium, and would in practice abolish the one of insurance premium notes, and we do not believe either paragraph 3449 or 3460, *supra*, ever contemplated that such procedure should be followed. We are of the opinion that so long as it is permissible to accept premium notes at all in payment of a policy, the mere fact that interest is not charged thereon is not a rebate, consideration, or inducement within the meaning of paragraph 3449, *supra*, so long as the transaction is in fact what it appears on its face, and not in reality a rebate of the premium.

"So far as we have been advised, there are but two cases in the United State wherein the precise point in question, to-wit, the failure to exact interest on a premium note being a violation of a statute of the same effect as ours, has been discussed. They are *Norther Assur. Company vs. Meyer & Nraenzlein*, 194 Mich. 371, 160 N. W. 617, and *McDonald & Frazier vs. Schervish*, 6 Ohio App. 88. In both of these cases premium notes without interest were given, and on statutes in effect like ours it was held that they were not privileges or inducements within the meaning of the statute. It is true that in the

first case, as is pointed out by defendant, the period for which the note would not bear interest was but a few days, and in the second case the court stated that the weight of the evidence was that the delay in time of payment was not an inducement to take the policy. We are satisfied that the decisions were correct in their conclusions, and although the reasoning therein may not have been based on the principles we have allowed, it is not contradictory thereof. The trial court did not err in overruling defendant's motion for an instructed verdict, or in denying this motion for judgment non obstante based on the non-exaction of interest."

The conclusion there reached, and in which we concur, is that the waiver of interest on deferred installments of premiums on insurance contracts is "not a rebate, consideration or inducement" within the meaning of Section 6371 of the Code of Alabama of 1923. Having reached this conclusion that such waiver is not a rebate, consideration or inducement within the contemplation of the statute, it is readily apparent that it is unnecessary to specify the fact of such waiver on the face of the policy.

It cannot be said that the acceptance of notes without interest, in payment of deferred installments of the premium on an insurance contract is of itself a discriminatory act, as against other policyholders or insureds of the same class. It does not appear that the same concessions would not be made by this insured to others desiring insurance of the same general class and under the same general circumstances and conditions as the proposed insured here, and in the absence of such showing, it cannot be said that the taking of these notes or school warrants without interest until maturity would contravene the anti-discriminatory clause of the statute.

Quoting from the case of *Illinois Life Insurance Company vs. Kennedy*, 197 Illinois Appeals page 29, in which a similar statutory provision was being construed:

"The mere fact that an insurance company accepts a note instead of cash in payment of the first premium does not constitute such a violation of the Act of 1891 prohibiting unjust discrimination by life insurance companies between insureds of the same class, so that it may be availed of as a defense to a suit on the note, and this especially where there is no evidence that any discrimination was made in the instant case, even though the acceptance of the note in some cases and not in others could be held to be a discrimination."

It is therefore, my opinion that the acceptance of notes or school warrants or obligations without interest in payment of deferred installments of premium on the proposed policy of insurance here does not constitute such a rebate or inducement within the contemplation of Section 8371 of the Code of Alabama of 1923, as would invalidate or render illegal the contract of insurance, where the facts of such acceptance of such obliga-

tions without interest was not specified on the face of the policy; and further that the acceptance of such obligations would not of itself contravene the anti-discriminatory clause of the statute.

Trusting that this answers your inquiry, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 5, 1934.

Hon. James H. Hard, Jr.,
State Comptroller,
CAPITOL.

Board of Registrars without authority to appoint person to fill vacancy on said Board and when such appointment is attempted to be made the State is without authority to pay the warrant of such person so submitted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 31, 1934 in which you request my opinion as follows:

"I am submitting to you a copy of a letter received from Hon. E. L. Hurst, Probate Judge of Etowah County, in which he sets forth a statement of facts relative to the services rendered by Registrars of election in his County, and in which he asks that determination be made by this office as to payment for such services as rendered in such registration of election.

"The authority for paying Registrars is found in General Acts of Alabama, 1933, page 6, and at Act No. 8, S. B. 17—Cowart, approved February 22, 1933. In this Act you will observe that it is provided that each Registrar shall receive \$5.00 per day to be paid by the State and disbursed by the several Judges of Probate for each day's attendance upon the session of the Board.

"In the statement of Judge Hurst, it appears that Mrs. Ella Watson Vann is a duly appointed Registrar for Etowah County. It appears further, that she was unable on account of the events mentioned in the letter to attend the session of the Board of Registrars, for each day of nine and one-half days. It appears further that the Chairman of the Board substituted Mrs. Myrtle Gray in the place of Mrs. Ella Watson Vann for a period of eight days, and substituted Miss Frances

Butcher for a period of one and one-half days in the place of Mrs. Ella Watson Vann. It appears further that Mrs. Ella Watson Vann, in making claim against the State for services rendered and for attendance on the days of the session of the Board, refuses to make claim and affidavit for the nine and one-half days which she did not attend.

"With this presentation of the matter, you are requested to advise whether or not there would be any authority for the State Comptroller to issue a warrant in favor of Mrs. Myrtle Gray for \$40.00, for eight days services she rendered as a substitute for Mrs. Ella Watson Vann, or for the State Comptroller to issue warrant on the affidavit of Miss Frances Butcher that she rendered one and one-half days services as substitute for Mrs. Ella Watson Vann."

I find no authority of law for the substitution by the Board of Registrars or its Chairman, of any person to fill a vacancy on such Board, even though it be temporary. Section 372, Code of Alabama, 1923 sets out how vacancies on such Boards are filled and is as follows:

"Vacancies of registrars; how filled—If one or more of the persons appointed on such board or registration shall refuse, neglect, or be unable to qualify or serve, or if a vacancy or vacancies occur in the membership of the board of registrars from any cause, the governor, state auditor and commissioner of agriculture and industries, or a majority of them acting as a board of appointment, shall make other appointments to fill such board."

Such vacancies can only be filled in accordance with the above Section and in no other way. Therefore, there being no authority of law for such substitution or appointment there could be no authority of law for the payment of such a claim.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 5, 1934.

Hon. A. F. Harman,
Department of Education,
CAPITOL.

Schools—Amending application on Rural Schoolhouse Erection, Repair and Equipment Fund after project is completed.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 11, 1934, in which you state that in several building projects throughout the state where local funds have been put up and matched in the regular way, C. W. C. has contributed both in labor and materials in varying amounts, thus leaving unexpended balances of the matched funds (local deposits and state warrants) after the project has been completed.

You request my opinion as to whether or not you would be justified in approving an amendment made by the county boards of education by attaching a rider to the original applications providing that the balances of the matched funds above mentioned be used in the erection of additional rooms, in repairs, or in the purchase of needed equipment on the same projects listed in the original applications.

I am of the opinion that your inquiry should be answered in the negative.

The purpose of the Rural School House Erection, Repair and Equipment Fund (Article XIII, Sections 370-386 of the School Code of 1927, as subsequently amended), in my opinion, is to allow the matching of funds in order for the state to aid the counties in the completion of approved projects. The provisions of the law providing for same must be strictly followed. When an approved project is completed the purpose of the law in question has been fulfilled. If the cost of the project was less than estimated, and there is a balance of county and state funds, both have saved money.

I know of no authority of law for amending an application after a project is completed. In order to effectuate additional improvements on the same project with matched funds, a new application should be made.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 5, 1934.

Hon. George W. Hulme, Superintendent,
DeKalb County Board of Education,
Fort Payne, Alabama.

Schools—Selection of School Trustees under Section 133, School Code, 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 16, 1934 in which you state that in compliance with Section 133, School Code of 1927, six persons were nominated from each school district and the County Board of Education selected three of these six to act as School Trustees. You further state that in some cases that one or more of the three selected have refused to serve.

You request my opinion as to whether or not the County Board of Education, in appointing other patrons to fill the vacant places, should make a choice from the six nominated or may they select any patron from such school district.

I am of the opinion that the County Board of Education should make the choice for filling the vacant place or places from the six nominated by the patrons of the school.

Section 133, School Code of 1927 only authorizes the nomination of six persons by the school patrons. Said section further provides that County Boards of Education **shall** appoint from six persons the School Trustees. The premises considered, I am of the opinion that the three Trustees should be selected from the six nominated. If one or more selected from the six refuse to serve, the place or places vacated should be filled from those remaining.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 5, 1934.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of the words, "Owning controlling, operating and-or managing" as used in Section 1 of the Alabama Motor Carrier Act of 1931, Regular Session, 1931, p. 303.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of October 7, 1933, has been received. Your letter follows:

"Section 1 of the Alabama Motor Carrier Act of 1931 (General Acts of Alabama, Regular Session, 1931, p. 303) defines the term motor transportation company as used in the Act to mean 'any corporation, person, partnership or association, or the lessor, trustee, or receiver thereof, owning, controlling, operating and-or managing (1) any motor propelled vehicle not operated on or over rails, used in the business of transportation of passengers or property for hire as a common carrier over any highway in this State, or (2) any terminal or station facilities for passengers, freight or express transported by such company.'

"It has come to our attention that many motor transportation organizations engaged in the freight business are rather loosely formed. Frequently they are no more than mere freight-brokerage businesses, having no motor vehicles of their own, but contracting with shippers for freight to be forwarded via trucks which they employ to do the actual hauling. Sometimes these contracts between such brokerage concerns and the owners of the trucks specifically disclaim any liability on the part of the brokerage concerns in the operation of the trucks.

"The Act, in Section 5 grants a lien upon all property in this State of the motor transportation companies operating under the Act for the payment of the taxes imposed and Section 15 requires the vehicles operated under the Act to be continuously insured for the benefit of the public and shippers. There are other provisions of the Act laying certain duties in the operation of the vehicles qualified thereunder upon the shoulders of those who qualify them that are difficult of enforcement unless complete and absolute responsibility for such operations is assured by those who are nominally the owners, controllers or managers of such vehicles.

"We would like to know as specifically as it may be stated what the terms 'owning, controlling, operating and-or managing' as used in

the Act in question actually signifies in relation to the qualification of trucks under this particular Act."

The words "owning, controlling, operating and-or managing," occurring in Section 1 of the Alabama Motor Carrier Act of 1931 are stated in the alternative as well as the conjunctive.

The Act imposes upon the Commission the duty, first of passing upon the moral and financial responsibilities of those who desire to operate under the Act and, secondly, of supervising and regulating, with respect to rates, rules, regulations, services and practices, all motor transportation companies after they have obtained authority to operate under the Act.

These duties could not be performed unless those who qualify vehicles under the Act are fully responsible for their operations. Any divided responsibility over such operations between the certificate holder and some other person, firm or corporation would, in my judgment, defeat the purposes of the law and impair the right of the Commission to regulate them in the public interest.

There is another provision of the Act which indicates the degree of responsibility which the Legislature intended should be assumed by any operator of a motor vehicle qualified or to be qualified under the Act. Section 13 provides that at the time of granting a certificate of public convenience and necessity the Commission shall determine and fix the amount of bond or insurance to be given by the applicant for such certificate for the protection of passengers and the public against injury approximately caused by negligence of such motor transportation company its servant or agents, and in the case of vehicles transporting freight to indemnify the public against injury and the owner or person entitled to recovery therefor against any loss or damage to such freight. A careful consideration of the language used in Section 13 indicates that the Legislature intended that each holder of a certificate of public convenience and necessity should have on insurable interest in the vehicles operated as against liability to the public, to passengers in the case of passenger vehicles, and to shippers or receivers in the case of freight-carrying vehicles.

"In general a person has an insurable interest in the subject matter insured where he has such a relation or connection with, or concern in, it that he will derive pecuniary benefit or advantage from its preservation and will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against."—32 C. J., Sec. 204, p. 1111.

Considering all of the foregoing matters, I think that the Legislature intended by the use of the phrase above mentioned that the corporation, person, partnership, association, lessee, trustee or receivership who desires to qualify any vehicle under the Act should have such a degree of control over such vehicle at all times as to be responsible to the Commission and

to the public for its operation, and to have an insurable interest therein as against liability to the public for damages sustained by operation of the vehicle, to the passengers in case of a passenger-carrying vehicle, or to the shipper or owner of freight in case of a freight-carrying vehicle. Unless freight brokers or other exercise such responsibility over the vehicles which carry the freight that they ship, in my judgment, they cannot properly qualify under the Act as motor transportation companies.

I have not had the benefit of a construction of the Act with relation to the foregoing matters from our Appellate Courts, but my attention has been called to a recent decision of the Louisiana Public Service Commission which holds in accordance with the foregoing opinion with respect to the Louisiana Act which contains a similar phrase to that here under consideration. The facts showed that the applicant for a certificate of public convenience and necessity before the Louisiana Public Service Commission engaged the services of trucks and truck owners, allowing them their earnings less a percentage (53 1-3 %) which covered the expenses of collecting and assembling the freight at the point of origin. In passing upon the application, the Louisiana Commission said:

"This practice would in effect give the applicant, if granted a certificate, carte blanche authority to commission as many common carrier trucks as he chose and put them on the road, and thus in practice delegate the authority of this Commission to another, which is clearly at variance with the intent and purpose of Act 392 of 1926 and was evidently not contemplated by the Legislature at the time the Act was passed. To no delegate the legalizing of motor common carriers to another would impair the right of the Public Service Commission to pass upon the moral and financial responsibility of those motor common carriers, and would restrict the Commission in the performance of a duty clearly imposed upon it by the Act.

"Such an operation, in our opinion, does not comply with such provisions of said Act in that applicants herein do not own, control, operate or manage, in the sense provided in the Act, the trucks handling their shipments."—**Gulf Coast Motor Express of La., Inc., Case No. 1666, La. Public Serv. Comm., Order No. 1304, Sept. 29, 1933.**

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 6, 1934.

Hon. John S. Golson,
Judge of Probate, Butler County,
Greenville, Alabama.

Under Section 363, Acts 1919, page 282, license is not transferable.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 30, 1934, in which you state:

"I would like for you to give me your opinion as to whether or not an additional license should be charged the operator of a filling station hereinafter described. The facts regarding this filling station are as follows:

"One L. E. Ledlow was the owner of a filling station a few miles west of McKenzie, in this County, consisting of the station and four tourist cabins, and in connection with the station there was one pump with which to supply gasoline. In November the said L. E. Ledlow procured the necessary license for said filling station and pump. Subsequent thereto and prior to February, 1934, Ledlow sold said gas station and equipment connected therewith to the Sterling Oil Company, said Sterling Oil Company then installed an additional pump and rented it to one D. H. Moore and after D. H. Moore took possession of the filling station and equipment the said Moore procured the necessary license for such additional pump for a period of one year. The said D. H. Moore surrendered the possession of said filling station back to the said Sterling Oil Company about thirty days ago and the said Sterling Oil Company then released said filling station and the equipment connected thereto to one W. H. Lee and the said W. H. Lee has been cited by the Deputy License Inspector to procure license as the gas station and two pumps, the said Lee contending that he is not liable for such license.

"I would appreciate your opinion as to whether Mr. Lee should pay the license demanded."

In reply I call your attention to Section 363 of the Revenue Act of 1919 which provides in part as follows:

"* * * such license shall not be transferable nor shall it entitle the holder thereof to carry on any other business or do any other act than

that named therein, nor at any other location than that therein specified."

It therefore appears by the specific terms of the statute the license is not transferable.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 7, 1934.

Hon. James H. Hard, Jr.,
State Comptroller,
CAPITOL.

1. Solicitor's fees: Conviction of possessing prohibited liquors.
2. Protection afforded by an opinion of the Attorney General.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of March 1, 1934 which is as follows:

"Will you please refer to opinions of the Attorney General, 1930-32, and to page 98 thereof, and to an opinion rendered to Hon. Roy Sanderson, Clerk of the Circuit Court of Marion County, under date of February 12, 1931, and particularly to the answer to question four (4) found in the first paragraph at top of page 100, and also to Section 3738 of the Code of Alabama, page 196, and to the third paragraph from the bottom of the page, and advise, whether or not a Solicitor's fee for violation of law for 'keeping or having in possession spirituous, vinous, or malt liquors,' is \$30.00 or \$10.00, as stated in the opinion.

"Will you please advise further, if you determine that the Solicitor's fee in such cases is \$30.00, where the plain language of the law, without any doubt as to its positive direct statement, is in conflict with the opinion of the Attorney General, would the Clerk of the Circuit Court be protected where he fails to follow the plain language of the law, and charged a \$10.00 Solicitor's fee in case of conviction for violation of the law for, 'Keeping or having in possession, spirituous, vinous or malt liquors,' instead of \$30.00 Solicitor's fee and would he be liable for the difference between the amount of the fee as required by the plain language of the law, \$30.00—and \$10.00 Solicitor's fee as charged by him under the opinion of the Attorney General?"

In reply to your first inquiry I am of the opinion that that part of the opinion rendered by Assistant Attorney General Otts on February 13, 1931, to Hon. Roy Sanderson, Clerk, Circuit Court of Marion County, which holds that the Solicitor's fee in a case where one is convicted of possessing prohibited liquors is only \$10.00 is erroneous. In writing this opinion it is possible that Mr. Otts dealt only with the last paragraph of Section 3738, Code of Alabama, 1923, which provides for a Solicitor's fee of \$30.00 being charged in certain cases among which possession is not included, and the possession of prohibited liquors being a misdemeanor he naturally determined that the fee to be charged was \$10.00. However, another provision of said Section 3738, *supra*, provides that the Solicitor's fee of \$30.00 shall be charged in cases where one is convicted of the crime of possessing prohibited liquors.

In answer to your second question I beg to advise that Section 869, Michie's Code, 1928, applies only to cases where a particular officer has requested an opinion of this office and the opinion has been directed to him. No doubt any other officer acting under an erroneous opinion of this office would be technically liable for any acts of misfeasance on his part. However, it appears to the writer of this opinion that such an officer would have an equitable claim for the Board of Compromise and that the Comptroller's office should take matters of this kind into consideration and use their own discretion in meeting each particular case.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 9, 1934.

Hon. H. L. Parsons,
Police Officer,
Scottsboro, Alabama.

Violation of State Liquor Laws to sell contraband liquors from boat anchored in navigable river flowing through this state.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of August 1, 1934.

You desire my opinion as to whether or not a person who has been issued a Federal License to sell beer can legally sell same from a boat anchored in the Tennessee River.

I am of the opinion that a person so operating would be guilty of a violation of the laws of this state and would be subject to the jurisdiction of the county or counties whose jurisdiction extends to the margin of the river.

I refer you to Section 207, Code of Alabama, 1923 which is as follows:

"The jurisdiction over navigable streams, not included within the limits of any county, belongs to the county or counties whose jurisdiction extends to the margin thereof, and all process may be executed on such streams by officers of either county."

I also call your attention to the case of Jackson vs. State, 90 Ala. 590, 8 So. 862.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 9, 1934.

Hon. Cyrus B. Brown, President,
Montgomery County Board of Revenue,
Montgomery, Alabama.

Alabama Relief Administration—Unit of property used exclusively by it, exempt from taxation.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of July 30, 1934 wherein you request an opinion of this office as to whether or not state and county taxes can be waived on property which is to be used for relief purposes. The property in this instance is to be used by the Montgomery County Relief Administration as a mattress factory, sewing center, class rooms, etc.

In your letter you incorporated a letter written by Hon. C. W. Lacy, Acting Director of Work of Montgomery County Relief Administration to Hon. Harry E. Snow, Chairman of the Montgomery County Relief Administration, which letter is as follows:

"Mr. Hyman Greil advises that the Greil Building will be available to the Montgomery County Relief Administration at a monthly rental of \$400.00 per month, and that he will accept a credit on city, county and state taxes, now due or to become due, as payment on the rental price. Will you please advise at your earliest convenience as to the

possibility of acquiring this building for relief purposes. In addition to being an ideal location for the commodity warehouse, for which part of it is now used at a rental of \$25.00 per month, it is, in my opinion, an ideal location for the mattress factory, sewing centers—both white and colored—during the winter, class rooms for illiterates, and an ideal place for a general warehouse for the storing of surplus commodities of all kinds."

You also incorporated in your letter a letter received by you as Chairman, Board of Revenue of Montgomery County, from Hon. Harry E. Snow, in which letter you are asked if taxes can be waived on the Greil property if used by the Alabama Relief Administration.

The determination of your question rests entirely on Section 91 of the 1901 Constitution of Alabama and the construction placed thereon by the Supreme Court. Said Section is as follows:

"The legislature shall not tax the property, real or personal, of the state, counties, or other municipal corporations, or cemeteries nor lots in incorporated cities or towns, or within one mile of any city or town to the extent of one acre, nor lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, when same are used exclusively for religious worship, for schools, or for purposes purely charitable."

In the case of *Anniston City Land Co. vs. State*, 48 So. 659, 160 Ala. 253, the Supreme Court held that said Section 91, *supra*, is self executing and that the use of the property is the criterion to be used in determining whether or not certain property is exempt from taxation under said section. They also held that the legislature could not make ownership of the property the test or criterion. In the *Anniston City Land Company* case, *supra*, it appears that the said land company owned certain property located in the city of Anniston and that it leased it to certain parties who used it exclusively for school purposes. The court held that regardless of the fact that the property was not owned by the proprietors of the school, or that the owners were receiving compensation for the use of the property, that if the property was used exclusively for school purposes it was exempt from taxation.

In a case litigated between the same parties, reported in 64 So. 110, 185 Ala. 482, the Supreme Court held that the same property was not exempt from taxation because of the fact that the evidence disclosed that it was not used exclusively for school purposes.

I think there can be no doubt of the fact that the Alabama Relief Administration is purely a charitable organization and property used exclusively by it for purely charitable purposes would be exempt from taxation.

I am of the opinion however, that the property cannot be divided in its use and that if the Relief Organization rented only a part of the Greil building that that part used by it would not be exempt from taxation. If the entire unit of property was used by said organization for charitable purposes, I am of the opinion that the property would be exempt from taxation.

In view of the fact that the entire piece of property has not heretofore been used for charitable purposes it is my opinion that taxes now due could not be waived.

Yours very truly,
THOMAS E. KNIGHT JR.,
Attorney General.

August 9, 1934.

Hon. W. S. Garner,
Judge of Probate, Dale County,
Ozark, Alabama.

1. The deed filing tax provided for by Section 21½ of Act 163, approved July 22, 1927 allows deduction for the value of land conveyed, on account of a mortgage, the payment of which the grantee assumes, in cases, only where the mortgage on the land conveyed has been filed for record and the mortgage filing tax has been paid.

2. The exemption granted Federal Land Banks does not constitute a payment.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 23, 1934 in which you seek an opinion of this office as to the amount of filing tax which should be paid on a deed conveying certain property.

You set out in your letter the following facts:

Two mortgagors, owning a tract of land in this county, jointly, each separately mortgaged their interest in the same to the Federal Land Bank of New Orleans, La., in the total sum of \$25,260.93. Later, the mortgagors sold the land to Southern Company Inc., a corporation, domiciled in Dale County, Alabama. Southern Company, Inc., purchased the lands from the mortgagors, whereby it acquired the title from the mortgagor to the land, and an assignment to itself of the mortgages and mortgage debts. The total purchase price paid by Southern

Company, Inc., was \$40,000.00, in my judgement the fair market value of the land, making the difference between the purchase price and the mortgage debts on the land to be \$14,739.07, which is to be paid in cash, the two mortgages, so held by the purchaser, being and standing in lieu of cash payment of the residue.

Federal Land Bank of New Orleans being a federal corporation, as I understand, is generally conceded to be exempt from paying the mortgage tax. It did not pay its mortgage tax in this case on the two mortgages, aggregating \$25,260. 93. The question which confronts me is this: Is this situation one in which I should collect from the grantee, which tenders to me its deed to the land for record, the entire purchase price, including the cash paid and the mortgage indebtedness assumed? That is, should I collect revenue tax on \$40,000, or on \$14,739.07?

I refer you to an opinion rendered by this office to the Judge of Probate of Monroe County under date of September 23, 1932 (Biennial Report of Attorney General, 1930-32, page 1046) which deals with the exact question presented by you.

There is no deduction for the amount of the mortgage assumed by the grantee in the case stated for the reason that no filing tax is paid by the Federal Land Bank upon filing a mortgage for record.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 10, 1934.

Hon. W. D. Williamson,
Member, Court of County Commissioners,
Wedowee, Randolph County, Alabama.

Commissioners Court may pave road in a town and pay for the material and paving by use of gasoline fund moneys.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of May 28th has been received. Your letter follows:

"Please advise us if the Commissioners Court and Judge of Probate of Randolph County can legally purchase material and pave a street in the town of Wedowee, Alabama, a distance of approximately 800 feet and 20 feet wide, when the county owns approximately one-third of said street in front of the Court House and the approximate

cost of said material estimated by the State engineer is \$800.00, out of the gasoline funds of said county, and when said street connects the highway from the South to the North as is shown by the enclosed plat."

You inquire whether the Commissioners Court of,

"Randolph County can legally purchase material and pave a street in the town of Wedowee, Alabama, a distance of approximately 800 feet and 20 feet wide, when the County owns approximately one-third of said street in front of the Court House; and the approximate cost of said material estimated by the State engineer is \$800.00, out of the gasoline funds of said County."

What is known as county gasoline money must be expended exclusively for the maintenance, or construction or repair of roads or highways or bridges in the several counties. In my judgment the Commissioners Court of Randolph County may purchase the material and pave the road in the Town of Wedowee, indicated in your letter, and pay for the material and the paving out of the County Gasoline Fund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 13, 1934.

Hon. J. A. Lee, Superintendent,
Dallas County Board of Education,
Selma, Alabama.

Schools—Trustees need not be patrons.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 7, 1934 in which you request my opinion as to whether or not school trustees should be patrons of the school for which they are elected to serve.

The election of school trustees is governed by Section 133, School Code of 1927. An Act of the 1931 Legislature (General Acts 1931, page 672) relative to the election of school trustees has been declared unconstitutional by this office.—**Biennial Report of Attorney General, 1930-32, page 1018.**

Section 133, School Code of 1927 provides as follows:

"133. Trustees, How Selected.—The County Board of Education shall appoint for every school in the County from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the County Board of Education, through the County Superintendent of Education from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school."

The qualifications of the School trustees are specifically prescribed, and being a patron is not one of the qualifications. The qualifications of the trustees are that they must be competent and reliable persons of mature years residing near the schoolhouse and having the respect and confidence of the community.

All former opinions or parts of opinions in conflict with the foregoing are hereby overruled and withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 14, 1934.

Hon. A. F. Harman,
Superintendent of Education,
Montgomery, Alabama.

County Board of Education cannot be required to pay one-tenth of one per cent of the cost of construction of a building to the Divisional Code Authority provided by Act of Congress.

Opinion by the Attorney General.

Dear Sir:

I have your letter of August 13, 1934. You inquire whether or not the County Board of Education of a County of this State can be required to pay one-tenth of one per cent of the cost of construction of a building to the Divisional Code Authority as provided under the General Contractors' Code, which Code was adopted pursuant to an Act of Congress. You also inquire whether or not the same requirement can be prescribed by the Divisional Code Authority for construction work undertaken by a County Board of Education regardless of whether the cost of construction is being made from State funds or from local county funds.

My answer to your first inquiry is—no. My answer to your second inquiry is—no.

Congress by no delegation of its authority may in any wise interfere with the State in its performance of a governmental function. I certainly conceive of the erection of school buildings and construction work in connection with education in Alabama as a governmental function.

I know of no authority of Congress to impose any impediment upon any State in its function in the erection of buildings to further educational facilities of the State. Education is recognized in the Constitution of Alabama as a function of government.

While it seems unnecessary to cite authorities it might be very well to refer you to the following cases:

McCullough vs. Maryland, 4 Wheaton 316;
The Collector vs. Day, 11 Wallace 113;
Metcalf & Eddy vs. Mitchell, 269 U. S. 514;
Indian Motorcycle Company vs. U. S., 263 U. S. 570;
Pan Handle Oil Company vs. Miss., 277 U. S. 218.

I do not conceive that the State is engaging in a private enterprise in its educational endeavors. Consequently an arm or instrumentality of the State engaged in the construction of buildings for educational purposes would not fall within the influence of the cases of Metcalf & Eddy vs. Mitchell, South Carolina vs. United State, 190 U. S. 437, Olson vs. Bank of North Dakota, nor that most recent case of Ohio vs. Commissioner of Internal Revenue (Advance Opinions).

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1934.

Hon. M. E. McConnell,
Judge of Probate, Sumter County,
Livingston, Alabama.

Fee for issuing and recording marriage license.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 6, 1934 in which you request my opinion as follows:

"Will you kindly tell me what fee the Judge of Probate is allowed for issuing and recording marriage license."

See Section 7285, Code of Alabama, 1923, subsection of which reads as follows:

"Issuing and recording marriage license, together with consent to the marriage and certificate of its celebration and taking and recording bond. \$1.50."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1934.

Hon G. L. Malone,
Judge of Probate, DeKalb County,
Fort Payne, Alabama.

Counties—Use of sinking fund for current operations and expenses.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 9, 1934 in which you request my opinion as to whether or not funds can be taken from a sinking fund created for the purpose of paying off county bonds and used for current operating expenses.

Generally speaking, I am of the opinion that your inquiry should be answered in the negative. The sinking fund to which you have reference I presume is the one authorized by subsection 22 of Section 6755, Code of Alabama, 1923, as amended by Acts 1931, page 759. Said subsection provides as follows:

"To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness and to invest such sinking fund in such interest-bearing securities or deposit the same on interest-bearing account, within the State, as said Court may deem wise."

The sinking fund so created should be used in accordance with the provisions of the above quoted section.

However, our courts have held that the entire revenue of a county may be devoted to the payment of current governmental expenses when necessary, and that other claims though passed and allowed, must be deferred until there is a surplus in the Treasury over and above the amount necessary to meet such current expenses.—**Rhodes vs. Marengo County Bank**, 205 Ala. 667, 88 So. 850; **Ramage, Parks & Co. vs. Folmer**, 214 Ala. 661, 108, So. 580. Therefore, if it is absolutely necessary to use part of the sinking fund for the necessary operating expenses of the county same may be done, otherwise not.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1934.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Schools—Payment for taking school census.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 7, 1934 in which you request my opinion as to whether or not it is legal for the County Board of Education to pay the expenses of the school census out of the school funds.

I am of the opinion that your inquiry should be answered in the negative.

Section 122 of the School Code of 1927, which provides for taking the school census, specifically provides that the compensation of the enumerators shall be paid out of the treasury of the county. I know of no authority to pay same out of the school funds.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1934.

Hon. O. C. Weaver,
Superintendent of Education,
Brewton, Escambia County, Alabama.

School—Compensation of school census enumerators.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 14, 1934, in which you request my opinion as to whether or not the Court of County Commissioners shall issue warrant directly to each school census enumerator on presentation of bill.

I am of the opinion that your inquiry should be answered in the affirmative. The compensation of school census enumerators is governed by Section 122, School Code of 1927. Said section specifically provides that same shall be paid out of the treasury of the county. Therefore, the claim should be presented to the Court of County Commissioners, duly audited and approved as other claims against the county, and warrant should in turn be issued accordingly.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1934.

Hon. J. M. Gray, Crairman,
County Commission of Walker County,
Jasper, Alabama.

Court of County Commissioners under facts authorized to employ an accountant to audit the County books and to pay such auditor's expenses incurred in presenting and explaining the audit to the P.W.A. authorities in Washington.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you ask my opinion as to the right of the Commission to employ an accountant to examine the county books and particularly those of the County Treasurer, and also to pay such accountant's

expenses to Washington with reference to certain information required by the P.W.A. authorities in granting a loan to Walker County to build a hospital, jail, almshouse, and the pavement of two road projects.

In answer I advise that the authority of the County Commissioners to employ an accountant is very fully upheld in an opinion appearing in Biennial Report of Attorney General, 1930-32, appearing at page 234. The authority therefore to employ an auditor would seem under this opinion to be authorized.

With reference to the payment of expenses the matter is not so clear. Ordinarily Courts of County Commissioners have no powers except those specifically given by statute. However, as pointed out in the foregoing opinion there are certain powers incident to those expressed and conferred which are necessary to the performance of the conferred powers and these incidental powers are necessarily implied. It may therefore develop that in making an audit of the books of the county that the auditor must incur certain expenses and it might be necessary to make certain trips for the best interests of the county, in which case it would seem that the payment of such expenses is within the implied powers of the Court of County Commissioners. This expenditure of course is one subject to the strict scrutiny of the court and allowance therefor should be made only when the best interests of the County require it or when it is necessary to a complete and full audit.

In the present case it would seem that if the P.W.A. authorities were not satisfied with the audit as presented and required explanatory data and information from the auditor who made it, then such an expense would be such a part of the audit as to authorize the payment of reasonable expenses.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1934.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Judges of Probate—Affidavit acknowledged before clerk as Notary Public.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 12, 1934 in which you request my opinion as to whether or not an affidavit acknowledged before one of the recording clerks in the Probate Office who has been appointed a Notary Public must be charged and accounted for as a fee of the Probate Office in accordance with the "Sparks Amendment."

I am of the opinion that your inquiry should be answered in the negative.

This office has ruled that affidavits or acknowledgements taken by the Judge of Probate in his official capacity must be charged and accounted for by reason of the maximum salary limit under the "Sparks Amendment."—**Opinions of Attorney General, Book 16, p. 354 (Off. Ed.)**

However, an acknowledgement taken by a clerk in the Probate Office in his capacity as a Notary Public is an act in the capacity of a Notary Public alone. Such is not, in my opinion, an official act of the Probate Office which will necessitate the Judge of Probate charging and accounting for fees in question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 17, 1934.

Hon. A. F. Harman,
State Department of Education,
CAPITOL.

Schools—Employment of Auditor by County Board of Education.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 30, 1934 in which you request my opinion as to the legality of a County Board of Education employing an auditor to make an examination of the accounts of the board and meet the payment for same from public funds.

I am of the opinion that your inquiry should be answered in the negative. I know of no authority of law for such procedure. The examination

of public accounts is governed by Chapter 24 (Sections 735-752) of the Code of Alabama, 1923. The examination in question should be made in accordance with said chapter of the Code and paid for accordingly.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 7, 1934.

Hon. Chas. C. Greer,
Superintendent of Insurance,
CAPITOL.

A domestic insurance company in computing the amount due as its annual premium tax can deduct only the ad valorem taxes payable during the year such premium income was received.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter with reference to claim of the Mutual Savings Life Insurance Company of Decatur, Alabama that it be allowed credit for ad valorem taxes paid in the years 1928, 1929, 1930 and 1931 against the current premium tax which would be due by said Company. You ask if it is proper to allow credit against the premium tax for ad valorem taxes paid in past years which were not claimed at the time the annual premium tax was payable for the years in question.

Section 3 of the Revenue Act of 1927, Acts 1927, page 139, provides in part:

"Domestic insurance companies shall pay to the Insurance Commissioner One (\$1.00) Dollar on each One Hundred (\$100.00) Dollars of gross premiums, less return premiums received by it for business done in this State during the preceding fiscal year ending December 31st, as a tax for the current year, whether or not same are actually received in this State or elsewhere, and no credit or deduction of any kind shall be allowed on account of the cost of re-insurance taken by such company in a company not authorized to do business in this state, provided that such domestic company shall at the end of the first complete calendar year of its operations pay to the Commissioner of Insurance an amount equal to One (\$1.00) Dollar on each One Hundred (\$100.00) Dollars of gross premiums, less return premiums, as a tax for the first year of its operations in this State."

In the same Section there is a provision that in ascertaining the premium tax to be paid by domestic insurance companies there shall be deducted from the amount of premiums upon which taxes are due the aggregate amount of the loans of money made by such companies in this State and which shall be secured by existing mortgage or mortgages to it on real estate in this State and upon which mortgages there shall have been paid the recording privilege tax provided by law.

Section 8362 of the Code likewise provides in part as follows: "but any insurance company paying to the State a tax on its property or shares may deduct the same from this tax" meaning the premium tax.

In *American Standard Life Insurance Company vs. The State*, 147 So. 168, it was held that the Act of 1927 though silent as to this credit for taxes did not repeal the Code provision and that such taxes were deductible.

The opinion does not set out any facts showing that the taxes there sought to be deducted were taxes other than for the current year.

The premium tax is very clearly an annual license tax for the privilege of doing business in the State as an insurance company for the current year based on the premiums received for the previous year less the deductions allowed. It will therefore be seen that if ad valorem taxes are paid in accordance with law, that is prior to December 31st, that there will be a definite ascertainable amount to be deducted from the amount of license tax due on the premiums for each current year.

It appears to me that this is the purpose and intent of the statute—that the annual burden of the premium tax be decreased by the annual ad valorem tax paid.

It is my opinion that the ad valorem tax cannot be allowed to accumulate over a period of several years and then deducted from the premium license tax. Such a procedure would make it possible for a company whose premium income is small during a certain period to hold in reserve its ad valorem credits and take them at such time the premium tax would be material. It could, therefore, happen that notwithstanding the business for which a license is required might be much greater in one year and presumably liable for a greater license tax by virtue of taking several years ad valorem taxes together and deducting them, to thus reduce the premium tax to a nullity or less than the amount paid in less prosperous years.

I think that this manifestly is not the purpose of the law. Greater premium income presumptively means a larger premium tax which purpose I do not think can be defeated by holding in reserve ad valorem payments over a period of years and deducting the same when the premium tax becomes material. It is therefore my opinion that the only ad valorem tax

which can be deducted from the premium tax due for doing business for the year 1934 is the ad valorem tax due and payable on October 1, 1933, and delinquent January 1, 1934.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 20, 1934.

Hon. Claude Hardy,
Judge of Probate, Escambia County,
Brewton, Alabama

Partial redemption provided by Section 3113 and 3114.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 7, 1934, in which you state:

"On June 30, 1932, the land of resident of this county sold for State and County tax on the land and on the personal property of the land owner. The property sold to an individual. In the amount for which the land sold was included the amount of a dishonored check given by the land owner to the Tax Collector for ad valorem tax on motor vehicles. The check for the vehicle tax had been given some time prior to the tax sale which was for taxes for the year 1931. The property was assessed to the owner for 1932 tax at the time of the sale and the purchaser at the tax sale subsequently paid the tax for 1932 including the tax on the personal property of the owner before the tax sale.

"Please answer the following questions relative to the above sale namely

"1. Would a mortgagee of a part of the land sold at the tax sale be required to pay a proportionate part of the check given for tax on the vehicles when he makes application for partial redemption of the property sold at said sale.

"2. Would a mortgagee of part of the land sold at tax sale be required to pay a proportionate part of the personal property tax for the year 1932 where the property real and personal was assessed for 1932 tax in the name of the owner before sale.

"We would appreciate your prompt reply to the above questions as we are having considerable trouble with the purchase at tax sale about the amount collected on the partial redemption."

Apparently you in rendering decree for sale judicially passed on the correctness of including in the application for sale of lands for unpaid taxes, the amount of the unpaid check given for motor vehicle taxes. As you rendered a decree that the lands should be sold for an amount which included such unpaid check, there is no necessity for me to express my opinion as to the correctness of such action.

I refer you to Section 3113 of the Code of 1923 which tells in detail what must be done.

From this provision it is my opinion that if the land were sold in part for personal property taxes, the person redeeming a part must pay his proportion of the amount of all taxes and interest which would be required to redeem all the lands including taxes on personal property, and must deposit the "amount of all costs and officers fees."

Please note Section 3114 requiring you to submit the application to the Auditor. As you know under the 1932 Act redefining the duties of the Auditor, you should send this application to the State Tax Commission.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 20, 1934.

Hon. W. H. Lindsey,
Judge of Probate, Choctaw County,
Butler, Alabama.

Counties—payment of office rent for local Relief Administration out of gasoline fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your telegram of July 11th in which you request my opinion as to whether or not County Commissioners can legally pay office rent for a local relief administration out of gasoline funds as men are certified for county road work by relief office and said office is headquarters for such work.

I am of the opinion that your inquiry should be answered in the affirmative, providing that the effect of such is to be for the exclusive benefit of maintenance, construction and repair of the public roads and bridges within the county.

This office has held that counties may pay office rent and expenses of National Reemployment Service out of the general fund of the county.

Opinion of the Attorney General (Off. Ed.) Book 18, page 5.

The office rent in question is of the same nature as that in the opinion above cited. Payment of such rent may be made out of the gasoline fund provided that same is for the exclusive benefit of the construction, maintenance and repair of public roads and bridges within the county.

Opinions of the Attorney General, Book 15, p. 26 (Off. Ed.);

Opinions of the Attorney General, Book 14, p. 45 (Off. Ed.);

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 20, 1934.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

There is no authority of law for publishing the names of election officers and managers but one time.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 30th, 1934 in which you request my opinion as follows:

"We have had a claim filed with Commissioners' Court asking the Court to pay for publishing the names of the election of officers for the May 1st primary; also for publishing these names prior to the June 12th primary. Please advise us if we can legally pay for both publications?"

You would not be authorized to pay but for one publication as the law states plainly that the officers and managers of the first primary shall also be the officers and managers for the second primary. Therefore, one publication will suffice.

Yours truly,
THOMAS E KNIGHT, JR.,
Attorney General.

August 20, 1934.

Hon. R. L. Leonard,
Treasurer, Walker County,
Jasper, Alabama.

Witness fees unclaimed belong to the county after six years from date of collection

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Attached please find a copy of a list of civil witness fees turned in to this office to me on the 7th inst.

"You will note that Mrs. Mae Amiss Ashmore is an ex-clerk of Walker County and that term of office has been out near on to six years and since the law, as I read it, states that six years after same is paid into the clerk, the funds are to be transferred into the general fund of the county.

"You will note that this money was not turned over to her successor at the time she went out of office and was not turned into the treasurer until the 7th of this month. I understand that the law provides that civil witness money is to be held by the county clerk for two years and if not paid out in that time, then the clerk is to turn same over to the treasurer, who is to hold the money for four years and if not claimed in those four years, same is to be transferred into the general fund of the county. This money not being turned into the succeeding clerk and now after the six years are past, I do not know whether or not I should pay same to the witnesses who served and who come and claim their fees."

Under the provisions of Section 7245, Code of Alabama, 1923, I am of the opinion that unless claim for witness fees is presented within six years of its collection by the clerk, it is barred and such fee or fees should be paid into the general funds of the county.

Biennial Report of Attorney General, 1928-30, page 401, Note 4.

The fact that the clerk did not pay into the treasury the fees as directed by law does not, in my opinion, affect the statute barring the claim after six years from the date of collection.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 21, 1934.

Hon. J. M. Gray, Chairman,
Walker County Commission,
Jasper, Alabama.

Claims against County must be filed within one year from the date of their accrual, otherwise barred by the statute of limitations.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date, in which you request my opinion as follows:

"On February 21, 1931, E. W. King filed with the Walker County Highway Department, a bill for work done and material furnished for repairing public roads.

"We find that there was paid on this account \$191.44, the last payment being made Mar. 22, 1921. It seems the reason for not paying the bill at the time was that the beat funds were exhausted and it was postponed from time to time and the balance of \$122.91 is still unpaid.

"Please advise if in your opinion the present County Commission can legally pay the balance due on this bill of \$122.91."

If this claim was filed with the Commissioners Court within a year after its accrual, then it would not be barred by the statute of limitations of one year, and your Commissioners Court would be authorized to pay the same at any time they had funds sufficient. Of course, if it was not filed within a year from the date of its accrual, then it would be barred by the statute of limitations and no payment could be made, but from what you say in your letter, I presume it was correctly filed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 21, 1934.

Hon. R. T. Simpson, Jr.,
Solicitor, Eleventh Judicial Circuit,
Florence, Lauderdale County, Alabama.

Poll Tax—How paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 29, 1934 in which you request my opinion as follows:

"1. Where a resident of the State has never been on the poll list or registered as a voter, does he become liable only for the poll tax as of the date he does register or is he required to pay up all of his poll taxes from the time of his twenty-first year?

"2. Where a former resident of the State who had never registered or voted in Alabama for a long term of years and then removes his residence back to Alabama and registers for the first time, how much poll tax does he have to pay at the time he registers, or does he have to pay any? Is he entitled to any exemption from poll tax by reason of having registered and paid poll taxes in another State?

"3. Where a non-resident moves into Alabama and registers, it is assumed that he only has to pay poll taxes from the time of his registration, and not from the time he was twenty-one years of age? Is this correct?"

Answering your first inquiry, will state that if this party was a resident of the State at the time he became twenty-one years of age and re-

mained such up to the present, he would have to pay all poll tax from the time he reached twenty-one up to the present time even though he had not registered up until recently, before he can vote in Alabama.—**Graves vs. Eubanks**, 205 Ala. 174.

In answer to your second question, will say that a party who was a resident of Alabama after he was twenty-one years of age, moved away from the State without registering and paying his poll tax, then returned later to the State and registered and desires to vote, would have to pay all poll tax due up to the time he left Alabama, and from the time he returned to Alabama up to the present, regardless of the time he registered. Of course, he would not be required to pay poll tax for the years he was a resident of another state.—**Biennial Report of Attorney General**, 1926-28, page 566.

Answering your third inquiry, where a non-resident of this State, who has never resided in this State, moves to Alabama; in order to vote he would have to pay all poll tax due by him from the time he became a citizen of this State up to the present time regardless of when he registered.—**Graves vs. Eubanks**, *supra*.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 24, 1934.

Hon. W. C. Oates, Secretary,
State Securities Commission,
CAPITOL.

Securities—Fees for registration based on actual value.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 2, 1934 in which you state the following facts:

A certain corporation applied to your Commission for the registration of 200,000 shares of capital stock. The par value of the capital stock in the Articles of Incorporation is figured at 10c per share, whereas the stock in fact will be sold for \$15.33 per share.

You request my opinion as to the proper fees for registration of the stock in question under Section 9885, Code of Alabama, 1923 as amended by Acts of 1931, page 788.

Section 9885, as amended, *supra*, provides in part as follows:

9885. Fees To Be Paid.—Each applicant for registration of securities shall at the time of filing its application pay to the commission, and the commission shall collect a filing fee of twenty-five dollars plus the sum of fifty cents for each one thousand dollars par value of each issue of securities for which application for registration is filed. If any of such securities have no par value, the price at which the applicant proposes to sell and issue the same to the public shall be deemed the par value thereof for the purpose of computing the fee to be paid by such applicant upon the filing of such application.

The filing fee of \$25.00 attached in all cases. The question then presented is upon what basis should the fifty cents for each one thousand dollars par value be calculated.

In the instant case I am of the opinion that same should be based on the actual sales price of the stock rather than the alleged 10c per share par value as stated in the Articles of Incorporation. In other words the calculation should be made on the \$15.33 per share actual sales value basis.

The amount of the fee chargeable is based on the "par value" of the stock. "Par Value" has been construed to mean an amount equal to the amount actually subscribed and paid for the stock.—**46 Corpus Juris 1175** and cases cited.

"Capital stock" is the aggregate amount of money or other valuable thing contributed or paid into a common treasury as a condition or security for the faithful exercise of the corporate functions.—**State vs. Guaranty Savings Building and Loan Assn.**, 225 Ala. 481, 144 So. 104.

Moreover, in determining the meaning of "capital stock" the term should not be controlled by descriptive words, but rather by the qualities possessed by it.—**State vs. Guaranty Savings Building and Loan Assn.**, *supra*.

In view of the judicial interpretation of "par value and "capital stock" it is my opinion that the actual sales value should be looked to in determining the par value. It is true that the Articles of incorporation of the corporation state the par value of its capital stock to be a nominal amount. This does not necessarily represent the true par value thereof. The qualities possessed by the capital stock control rather than descriptive words.

Therefore, the true value of the stock should be made the basis of calculation in determining the amount of the fee chargeable under Section 9885, as amended, *supra*. The nominal par value as stated in the Articles of Incorporation may be disregarded.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 24, 1934.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

A wholesaler, in the absence of any special contract to the contrary, who charges a delivery fee for delivering goods to a purchaser or customer, is exempt from compliance with the Alabama Motor Carrier Act of 1932.

Opinion by Assistant Attorney-General Carmichael.

Dear Sir:

We beg to acknowledge receipt of your letter of June 22nd. We have also received a letter from Mr. Baxley of Dothan. Both your letter and Mr. Baxley's letter follow:

"Copy of your letter of June 21st addressed to Hon. Keaner Baxley, Judge Court of Common Pleas of Dothan, Alabama, has been received, with which you transmit Judge Baxley's letter of June 4th addressed to you in which, as we understand it, he sought an official opinion from you as Attorney General upon the questions set out in his letter.

"It seems to us that Judge Baxley acted advisedly in requesting such official opinion from you, and evidently he wanted something which he could use as a guide to him with respect to issuance of warrants in cases referred to, and trial of parties charged with offenses under said Act.

"Judge Baxley evidently recognized that the Public Service Commission has a limited part in the administration of this statute, sometimes referred to as the Tidwell Act or Alabama Contract-Common Carrier Motor Vehicle Act of 1932.

"The Public Service Commission does not begin to have jurisdiction over these carriers until after they have applied to the Probate Judge for and obtained a permit.

"The enforcement of the Act is placed upon the peace officers, including the sheriffs and their deputies and others, including special officers appointed by any agency of the State for the enforcement of its laws relating to motor vehicles,—as set out in section 29(a) of the Act. As you doubtless know, the State Highway Department has a number of men who give much of their time to this particular service, but these men are not under the control of the Public Service Commission, but are directed by the State Highway Department.

"We have not had the questions contained in Judge Baxley's letter before us, and if he had addressed his letter to the Commission instead of direct to the Attorney General, we would have been compelled to ask the Attorney General for his official opinion thereon for our guidance as well as for the guidance of Judge Baxley and other Judges similarly situated.

"We are, therefore, compelled to return this letter to you, and will appreciate your office mailing us a copy of your official opinion on the questions contained in Judge Baxley's letter as soon as such opinion has been issued."

(Judge Baxley's letter of June 4, 1934)

"The following proposition has been presented to me, and I respectfully request an opinion from you pertaining to same:

"The government code of fair competition requires certain wholesalers who have been delivering their products to their customers free of charge to add delivery charges to their prices. There is no question but that the goods remain the property of the wholesalers until actually delivered.

"1. Does the collection of delivery charges by the wholesalers from the retailers subject the wholesaler to obtain a license as a contract carrier?

"2. If delivering their own products in such manner does change their status to a contract carrier under the laws of Alabama, does the fact that the government code requires them to charge delivery in addition to their regular price (even though against their will) make them liable, or excuse them from qualifying as a common carrier or contract carrier under the Tidwell Act?

"Thus far, I have refused to issue any warrants in such cases, as I have been of the opinion that the fact that the goods were the property of the wholesalers until delivered, irrespective of the code requirements, was sufficient to excuse them from being chargeable as contract carriers, even though delivery charges were collected."

Under the facts stated, I do not think the collection of the delivery charge by a wholesaler from the retailer makes it necessary for the wholesaler to obtain a license as a contract carrier. The Act of 1932 defines contract carrier as: "Any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public." The Act provides further that the words: "Contract carrier" shall not be construed to mean or include: Any farmer,

merchant, manufacturer, or any other person, firm association or corporation who transports only his own property." Generally speaking, and in the absense of some special contract to the contrary, a wholesaler who delivers his wares or products to his customers and charges a delivery fee, is transporting property of the wholesaler. In my judgment it is immaterial whether a delivery charge is or is not charged by the wholesaler. The wholesaler is delivering his own property and in so doing becomes exempt, as provided by Exemption No. 1 under (d), p. 179 of General Acts of Alabama, Extra Session, 1932.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 28, 1934.

Hon. J. C. Godfrey,
Sheriff,
Livingston, Ala.

Board of Revenue or Court of County Commissioners cannot sell gasoline without payment of the State tax thereon.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 25, 1934, in which you state:

"Please give me your opinion as to whether or not the Board of Revenue could sell me gasoline at cost. They buy gas in carload lots less the tax and they are willing to let me have it at cost, if they can do so legally."

In reply I beg to advise that it is my opinion the Board of Revenue cannot sell gasoline unless it pays the tax due the State on all gasoline sold by it. It is probable, though I do not at this time make positive expression of opinion that it will likewise have to qualify as a dealer.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 28, 1934.

Hon. Thomas W. Coleman,
Judge of Probate, Calhoun County,
Anniston, Alabama.

Mortgagee Federal Savings and Loan Association not exempt from
filing tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 6th in which you state:

"Please advise me if mortgages executed by Federal Savings and
Loan Association are exempt from the mortgage tax on filing for rec-
ord."

In my opinion such mortgages are not exempt. The exemption pro-
vision of Sec. H, Act June 13, 1933, C. 64, par. 5, 49 Sta. 133 (12 U.S.C.A.
1464 (h)) does not cover this tax.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 28, 1934.

Hon. W. L. Pratt,
Judge of Probate, Bibb County,
Centerville, Alabama.

Tax deeds require filing tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 7, 1934, in which you state:

"Should a tax be collected on tax deeds made by Probate Judge to
a party who bought land at tax sale?"

In reply will say that in my opinion the filing tax is due.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 7, 1934.

Hon. J. H. Hard, Jr.,
State Comptrolrier,
CAPITOL.

Garnishment--State officials and employees.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 7, 1934 in which you request my opinion as to the construction of Article 3, Chapter 298 (Sections 8088-93) Code of Alabama, 1923.

You enclose in your letter the regular form writ of garnishment served on you in a case where a state employee is defendant, also your answer to same. Said answer, after setting out the style of the case, reads as follows: "Replying to your summons in the above case, wish to advise that under the provision of Section 8092, Code of Alabama, 1923, I do not consent to the garnishment."

You, therefore, request my opinion as follows:

1. Is my answer sufficient and does it conform to the requirements of Section 8092?
2. If I refuse to assent or consent to the proceedings, am I required to withhold payment to the defendant as provided by Section 8093?

In answer to your first inquiry, I am of the opinion that your answer is sufficient, however, in my judgment it does not conform to the technical requirements of Section 8092, Code of Alabama, 1923.

It was well settled by judicial decisions that salaries of public officers cannot be garnished.—**Pruitt vs. State**, 56 Ala. 306; **Ex Parte Hurn**, 92 Ala. 102; **Skewes vs. Tenn. Coal and Iron Co.**, 124 Ala. 629. This general rule has now been changed in this state by Article 3 of Chapter 298, Code of Alabama, 1923 which authorizes the garnishment of officials and employees of city, county and state government or any department or institution thereof with the affirmative assent of the person authorized by law to draw the warrant on the treasury of the government in question.

Section 8092, Code of Alabama, 1923 provides as follows:

8092. Where an official of the State of Alabama or other person herein designated, has been garnished, as provided by the preceding section and answer has been filed by said person, in accordance with the mandate of said writ, admitting that the said State of Alabama is due, or will be due, the defendant in said garnishment proceedings, money for salary, and has said money ready for payment when due, the said answer must also show the assent of said person that judgment may be entered in said cause for the amount shown in said answer, or so much thereof as may be necessary to satisfy plaintiff's judgment. And in no case shall judgment against said official, or other person herein designated, as the agent of the state, be entered on said answer, or in said garnishment proceedings, unless such assent and consent to said judgment is shown in said answer. When such final judgment is so entered, after trial of said proceedings, the said judgment shall be against the official or person returning said answer, as such official or agent of the State of Alabama, as garnishee, and said judgment shall show that said official or person, as such agent of the state, consented that such judgment be entered in said garnishment proceedings.

Although said Section requires the writ of garnishment to be answered in accordance with the mandate thereof, yet in order to recover judgment against the state official, as garnishee, affirmative assent to the garnishment must be shown in the answer. Your answer in the instant case specifically denies such assent. Your answer, in my opinion, is sufficient in that it follows the spirit of the above quoted Code section although it does not conform to the technical requirement thereof.

In the future, I suggest that in answering writs of garnishment of this kind that you not only state whether you assent or not to the garnishment, but also state whether or not the state is indebted or will be indebted under a then existing contract to the state official or employee in question. Further, by Section 8067, Code of Alabama, 1923, the answer must be under oath.

In answer to your second inquiry, I am of the opinion that you will not be required to withhold payment to the defendant under Section 8093 after your answer of non-consent to the garnishment has been filed.

Section 8093, Code of Alabama, 1923, provides as follows:

8093. After such writ has been served as provided in this article, the said agent of the state shall draw no warrant or check for the money due such defendant, as salary, and included in the answer filed in said garnishment cause until said garnishment proceedings have terminated, unless said writ is dissolved in the manner provided by the statutes. And after final judgment condemning said money, as herein provided, said agent of the state may draw warrant or check for the money so condemned and deliver same to the clerk of the court, or to the court, where such judgment was obtained.

Under said Section you are required to withhold payment until garnishment proceedings have been terminated or dissolved. In my opinion, when your answer of non-consent has been filed said proceedings terminate in that it is impossible to render judgment against you as garnishee unless an affirmative assent is shown in said answer.

I am returning herewith the file in this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

SOLICITOR'S REPORTS

GENERAL SUMMARY OF CASES IN CIRCUITS

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequitis	Adopted or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Abandonment	1	1	1							
Abductions	1	1					1			
Abortion	2			2						
Abusive Language	238	111	29	83	15			57	9	45
Accessory after fact	8	5	1	2				1	4	
Adultery	50	18	4	23	5			10	1	7
Affray	20	11	5	2	2			8		3
Aiding an escape	15	5	1	8	1		1	4		
Allowing hogs to run at large	1		1							
Altering mark on cow	1		1							
Altering public record	1	1					1			
Arson	112	39	28	36	9		39			
Assault	42	28	5	8	1			16	5	7
Assault and battery	701	404	70	174	53			255	8	141
Assault to murder	680	348	85	188	59		297	38	1	12
Assault to ravish	55	36	3	10	6		33	3		
Assault to rob										
Assault with weapon	58	36	5	11	6		32	4		
Attempt to commit felony	297	206	19	52	20			134	5	67
Attempt to aid escape	194	164	4	17	9		7	65	6	86
	3	3					3			

[illegible]

GENERAL SUMMARY OF CASES IN CIRCUITS, 1932-1934—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Disturbing public worship	96	35	4	52	5			22	4	9
Disturbing women	1				1					
Driving while intoxicated	127	81	8	26	12			56	7	18
Dueling	7	7						6	1	
Embezzlement	245	60	21	115	49		44	12	1	3
Escape	33	24	3	4	2		1	19	1	3
Extortion	2			2						
Failing to bury dead animal	3		1	2						
Failure to pay for cotton	1	1					1	1		
Failure to work road	9	1	1	7			1			
False pretense	147	28	16	75	28		10	14		4
False weights, use of	2	1		1				1		
Forgery	351	191	12	107	41		123	66		2
Fraudulent conveyance	1			1						
Gaming	42	7		31	5			2		5
Gaming table, operation of	2	1		1						1
Grand larceny	1657	1171	85	275	126		1003	168		
Highway robbery	5	3	2				3			
Hunting wild hogs	1	1								1
Incest	16	11	3	1	1		11			

[illegible]

GENERAL SUMMARY OF CASES IN CIRCUITS, 1932-1934—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Fine	
Permitting minor to play pool	2			1	1					
Permitting sheep killing dog to run at large	1			1	1					
Petit larceny	692	476	60	130	26		386	29	61	
Placing poison on premises of another	2			1	1					
Practicing medicine without license	4	4						1	3	
Presenting firearms	45	18	2	14	11		11	2	5	
Public drunkenness	180	78	10	77	15		23	5	50	
Racing horse on highway	1	1							1	
Rape	60	32	11	14	3	5	27			
Reckless driving	138	66	16	46	10		23	3	40	
Repossessing property unlawfully	1			1						
Resisting officer	16	8	1	5	2			3	2	
Robbery	319	200	40	64	15	3	197			
Seduction	40	6	3	30	1		6			
Sending threatening letter	2		1	1						
Shooting along highway	5	2		3				1	1	
Shooting into dwelling	13	10		2	1			6	1	
Shooting into Railroad car	4	3		1			3			
Slander	2	1		1						
Slot machine, operation of	4	1		1	2			1		
Sodomy	4	4					4			

Subornation of perjury	7	5	2			3	2
Soliciting votes on election day	5		4	1			
Temporary use of auto or property	20	14	4	2		7	7
Throwing into dwelling	4	1	2				1
Throwing into train	1	1				1	
Throwing tear gas bomb	3		3				
Trapping	1		1				
Trespass	100	23	16	52	9	10	6
Trespass after warning	18	3	1	14		2	1
Trespass and cutting timber	17	9	3	5		4	5
Trespass and cutting timber on school lands	1			1			
Unlawful assembly	6		3	2	1		
Unlawful riding train	4	2	2				2
Unlawful using electricity	9	5	2	1	1	4	1
Using steel trap	1			1			
Vagrancy	134	37	2	81	14	19	4
Violating auto law	24	11	2	10	1	4	14
Violating banking law	36	2	32	2		2	7
Violating barber law	32	2	1	27	2	1	
Violating corrupt practice	1			1			1
Violating cosmetology law	29	1	15	13		1	
Violating election law	9	4	5			4	
Violating game law	94	22	23	40	9	8	14
Violating highway law	74	36	8	21	9	12	2
Violating insurance law	6	4	1	1	1		1
Violating labor law	1		1				3
Violating marihauna law	1		1				
Violating oyster law	6	6				6	

GENERAL SUMMARY CASES IN CIRCUITS, 1932-1934—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequis	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating plumbing law	2			2						
Violating prohibition law	1975	963	251	534	227		236	473	14	240
Violating revenue law	207	63	14	108	22			19		44
Violating securities law	29	8		17	4		8			
Violating stock law	27	2	1	11	13					2
Violating Sunday law	23	14	1	8				3		11
Violating sunset law	6	4	1	1				2		2
Violating tick law	1				1					
Worthless check	129	18	8	43	60		1	9	2	6
Totals	15981	9244	1439	3946	1352	29	5498	2417	141	1159

Percentage of convictions .579. Predominant crime, violations of prohibition law.

GENERAL SUMMARY OF CASES IN CIRCUIT COURT

FIRST CIRCUIT													
Choctaw County	78	37	12	22	7	19	7	11					
Clarke County	154	79	14	50	11	41	19	19					
Washington County	117	37	32	31	17	13	9	2	13				
Totals	349	153	58	103	35	73	35	2	43				
SECOND CIRCUIT													
Butler County	57	51	2	4	1	37	8	5					
Crenshaw County	157	97	11	49	49	49	41	7					
Lowndes County	71	57	3	10	1	50	6						
Totals	285	205	16	63	1	136	55	12					
THIRD CIRCUIT													
Barbour County	187	95	32	41	19	54	21	1	19				

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Bullock County	116	71	11	13	21		41	15		15
Dale County	96	60	11	23	2	1	39	9		11
Russell County	283	160	51	71	1		87	50		23
Totals	682	386	105	148	43	1	221	95	1	68
FOURTH CIRCUIT										
Bibb County	118	87	5	18	8		27	15	1	44
Dallas County	240	176	4	46	14	3	104	20	2	47
Hale County	172	138	4	23	7	1	53	28	6	48
Perry County	123	82	5	33	3	1	39	17	2	23
Wilcox County	114	76	6	24	8		61	6		9
Totals	767	559	24	144	40	5	284	88	11	171

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

GENERAL SUMMARY OF CASES IN CIRCUITS, 1932-1934—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	
						Death	Peniten- tiary	Hard Labor	Jail		
EIGHTH CIRCUIT											
Cullman County	179	75	31	67	6		40	6	2	27	
Lawrence County	115	57	11	38	9		52	5			
Limestone County	200	124	22	52	2		103	11	6	4	
Morgan County	236	126	39	64	7	4	115	2		5	
Totals	730	382	103	221	24	4	310	24	8	36	
NINTH CIRCUIT											
Cherokee County	71	22	4	40	5		14	3		5	
DeKalb County	82	43	9	28	2		37	2		4	
Jackson County	208	90	14	88	16		68	15		7	
Marshall County	201	71	11	109	10		49	8	6	8	
Totals	562	226	38	265	33		168	28	6	24	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1932-1934—(Continued)

TENTH CIRCUIT												
Jefferson County	2673	1491	265	803	114	2	880	557	7	45		
Totals	2673	1491	265	803	114	2	880	557	7	45		
ELEVENTH CIRCUIT												
Colbert County	175	92	20	36	27		61	24		7		
Franklin County	50	37	6	5	2		31	2		4		
Lauderdale County	151	110	11	20	10		98	5		7		
Totals	376	239	37	61	39		190	31		18		
TWELFTH CIRCUIT												
Coffee County	173	107	28	36	2		61	44		2		
Pike County	169	120	18	31			94	23		3		
Totals	342	227	46	67	2		155	67		5		

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Value Proscriptions	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Fine	
THIRTEENTH CIRCUIT										
Mobile County	1695	876	74	84	661	5	224	564	68	15
Totals	1695	876	74	94	661	5	224	564	68	15
FOURTEENTH CIRCUIT										
Fayette County	76	53	5	16	2		33	6		14
Lamar County	68	28	9	31			17	5	1	5
Marion County	109	56	15	37	1		16	5	1	34
Walker County	330	181	28	112	9		79	52		50
Winston County	144	90	15	37	2		51	30	6	3
Totals	727	408	72	233	14		196	98	8	105

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

FIFTEENTH CIRCUIT													
Montgomery County	678	530	39	109					3	446	39	3	39
Totals	678	530	39	109					3	446	39	3	39
SIXTEENTH CIRCUIT													
Blount County	173	62	24	83	4					36	11	1	14
Etowah County	315	137	16	147	15					129	8		
St. Clair County	120	48	15	55	2					42	6		
Totals	608	247	55	285	21					207	25	1	14
SEVENTEENTH CIRCUIT													
Greene County	161	113	12	36					1	35	48		29
Marengo County	119	77	10	32						42	16		19
Pickens County	98	66	13	17	2					40	8		18
Sumter County	150	112	6	15	17					71	14	1	26
Totals	528	368	41	100	19				1	188	86	1	92

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	
						Death	Peniten- tiary	Hard Labor	Jail		
EIGHTEENTH CIRCUIT											
Clay County	76	55	13	8			42	7	2	4	
Coosa County	74	63	6	5			59	3		1	
Shelby County	280	171	37	62	10		127	36		8	
Totals	430	289	56	75	10		228	46	2	13	
NINETEENTH CIRCUIT											
Autauga County	72	56	5	11			42	12		2	
Chilton County	560	308	35	170	47		66	200	1	41	
Elmore County	199	132	18	41	8		82	49		1	
Totals	831	496	58	222	55		190	261	1	44	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1932-1934—(Continued)

TWENTIETH CIRCUIT										
Henry County	73	32	5	36				26	2	4
Houston County	169	61	11	97				43	5	12
Totals	242	93	16	133				69	7	16
TWENTY-FIRST CIRCUIT										
Baldwin County	140	61	8	38	33	1	34	18	6	2
Conecuh County	95	56	6	18	15		36	15	1	4
Escambia County	203	125	23	43	12		81	32		12
Monroe County	128	74	6	32	16	3	48	21		2
Totals	566	316	43	131	76	4	199	86	7	20
TWENTY-SECOND CIRCUIT										
Geneva County	177	97	15	57	8		57	29	1	10
Covington County	218	148	19	43	8		79	43	2	24
Totals	395	245	34	100	16		136	72	3	34

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	
						Death	Peniten- tiary	Hard Labor	Jail		
TWENTY-THIRD CIRCUIT											
Madison County	776	364	93	204	115		110	63	7	184	
Totals	776	364	93	204	115		110	63	7	184	

CIRCUIT COURT OF AUTAUGA COUNTY

Abusive language	1	1								1
Assault and battery	4	2	1	1				2		
Assault to murder	4	4						4		
Burglary	2	1	1					1		
Burglary and grand larceny	19	16		3			16			
Disposing of mortgaged property	2	2					1	1		
Distilling	5	3	1	1			3			
Driving while intoxicated	1	1						1		

False pretense	1	1							1	
Forgery	3	3							3	
Grand larceny	12	9	1	2					9	
Malicious injury to property	4	4								4
Murder	4	3		1					3	
Rape	2	2							2	
Robbery	1	1							1	
Trespass	1			1						
Violating prohibition law	6	3	1	2						1
TOTALS	72	56	5	11					42	12
										2

Percentage of convictions .777. Predominant crime, burglary and grand larceny.

CIRCUIT COURT OF BALWIN COUNTY

Arson	5	3							1			
Assault and battery	15	5		5					5			
Assault to murder	6	2	1	3					2			
Assault with weapon	2	1		1							1	
Bigamy	2	1							1			
Burglary	33	24	2	1	6				24			
Buying, receiving, concealing stolen property	3	1		2							1	
Carnal knowledge	2	1		1					1			

CIRCUIT COURT OF BALDWIN COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Pentiten- tlary	Hard Labor	Jail	
Carrying concealed weapon	2			2						
Concealing felon	4	4							4	
Contempt of court	4				4					
Cutting and removing timber	2	2								2
Disposing of mortgaged property	2				2					
Embezzlement	4	1			2		1			
Forgery	3	1			2		1	1		
Grand Larceny	3	1			2		1			
Malicious injury to animals	2				2					
Manslaughter	2	1						1		
Murder	2	2			1		1			
Obtaining board by fraud	1			1						
Petit larceny	4	2	1					2		
Presenting firearms	1				1					
Public drunkenness	4	1		2	1			1		
Reckless driving	2				2					
Resisting officer	1	1						1		
Vagrancy	1				1					
Violating banking laws	2				2					
Violating game laws	5			2						
Violating prohibition law	21	7		3	11			7		

TOTALS	140	61	8	38	33	1	34	18	6	2
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Percentage of convictions .435. Predominant crime, burglary.

CIRCUIT COURT OF BARBOUR COUNTY

Abusive language	5	2	3				2
Arson	2	2					
Assault and battery	21	12	5	2	2	10	2
Assault to murder	1	1				1	
Assault to ravish	1	1				1	
Assault to rob	1	1				1	
Attempt to burlarize	1	1				1	
Burglary	19	14	4	1		14	
Buying receiving or concealing stolen property	6	6				1	5
Carnal knowledge	2	1			1	1	
Carrying concealed weapon	5	3		1	1	3	
Conspiracy	2	2		2			
Disposing of mortgaged property	2		1	1			
Distilling	21	14	7			14	
Disturbing public worship	6	2		4			2
Driving while intoxicated	1				1		
Embezzlement	9	1			8	1	
Failure to bury dead animal	1			1			
False pretense	3	1		2		1	

CIRCUIT COURT OF BARBOUR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Forgery	9		1	8						
Grand larceny	17	13	2	1	1		13			
Malicious injury to animal	2	1	1						1	
Manslaughter	4	3	1				2	1		
Murder	4	3		1			3			
Perjury	3			3						
Public drunkenness	10	6	1	3				1		5
Resisting officer	2	1		1	1					1
Seduction	1	1					1			
Vagrancy	4	1	1	2				1		
Violating auto law	1	1								1
Violating game law	3		1	1	1					
Violating prohibition law	17	5	3	5	2			4		1
Worthless check	1				1					
TOTALS	187	95	32	41	19		54	21	1	19

Percentage of convictions :508. Predominant crimes, assault and battery and distilling.

CIRCUIT COURT OF BIBB COUNTY

Abusive language	7	6	1				6
Assault and battery	19	19					13
Assault to murder	1		1				2
Attempt to commit felony	3	3			1		2
Bastardy	2		1	1			
Burglary	5	5				5	
Burglary of railroad car	2	2				2	
Buying, receiving, and concealing stolen property	2	2					
Carnal knowledge	3		3				
Carrying concealed weapon	5	5				2	3
Defacing public property	1	1					1
Distilling	19	13	3	1	2	13	
Escape	1	1					1
Forgery	2	2				2	
Grand larceny	7	3	2	2		3	
Incest	1		1				
Malicious mischief	1		1				
Manslaughter	1	1			1		
Murder	3		1				
Petit larceny	10	8	2				4
Presenting firearms	3	1	2				1
Public drunkenness	4	2	1	1			2
Reckless driving	6	6					6
Shooting into dwelling	1	1				1	
Trespass and cutting timber	1	1					1
Vagrancy	1	1					1

CIRCUIT COURT OF BIBB COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Fail	
Violating prohibition law	7	4			2	1		1		3
Totals	118	87	5		18	8	27	15	1	44

Percentage of convictions .773. Predominant crime, assault and battery and distilling.

CIRCUIT COURT OF BLOUNT COUNTY

Abusive language	7									
Adultery	3			2	5					
Assault	1	1			3			1		
Assault and battery	18	7	4		7			1		6
Assault to murder	11	2	1		8		2			
Assault to ravish	1				1					
Burglary and grand larceny	5	5					5			
Carnal knowledge	1									
Carrying concealed weapon	3	1		1				1		
Desertion and non-support				3						

Disposing of mortgaged property	3	1	1	1	1	1	1	1	1
Distilling	16	9	1	6				9	
Disturbing public worship	3			3					
Driving while intoxicated	2	2							2
False pretense	4	1		3				1	
Forgery	5	2	1	1	1			2	
Gaming	7			7					
Grand larceny	10	5	2	3				5	
Manslaughter	2	2						1	1
Murder	7	4	1	2				4	
Perjury	1				1			1	
Petit larceny	5	1	1	3					1
Presenting firearms	1	1							1
Public drunkenness	8	4		4				1	3
Reckless driving	2	1		1					1
Robbery	3	3						3	
Seduction	5	2		3				2	
Trespass	2								
Violating game law	1		1						
Violating highway law	1			1					
Violating prohibition law	27	8	8	9	2			2	6
Violating stock law	5				5				
Totals	173	62	24	83	4			36	11
									1
									14

Percentage foconvictions 358. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BULLOCK COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Arson	5	2		1	2		2			
Assault and battery	19	17		1	1			9		8
Assault to murder	9	5	1		3		5			
Burglary	14	12		1	1		12			
Carrying concealed weapon	3				3					
Disposing of mortgaged property	1	1						1		
Distilling	5	3	2				3			
Distributing public worship	1	1								1
Embezzlement	1			1						
Escape	3	1	1		1			1		
False pretense	9	2		3	4					2
Forgery	6	1		4	1		1			
Grand larceny	14	12	2				12			
Manslaughter	4	4					4			
Murder	4	2	1	1			2			
Petit larceny	3	1	2					1		
Violating game law	2				2					
Violating prohibition law	11	5	2	1	3			3		2

	Violating revenue law	2	2							2
Totals		116	71	11	13	21		41	15	15

Percentage of convictions .612. Predominant crime, assault and battery.

CIRCUIT COURT OF BUTLER COUNTY

Assault and battery	4	4						2	2
Assault and battery with weapon	1	1							
Assault to murder	3	3						3	
Attempt to burglarize	1	1							1
Burglary	10	10						10	
Distilling	11	10	1					10	
Forgery	1	1						1	
Grand larceny	5	5						5	
Manslaughter	2	2						2	
Murder	5	4	1				1	3	
Petit larceny	4	3	1						3
Receiving stolen property	1	1	1					1	
Robbery	3	1	2					1	
Vagrancy	1	1							1

CIRCUIT COURT OF BUTLER COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Pentitentiary	Hard Labor	Jail	
Violating prohibition law	5	5					2	1		2
Totals	57	51	2	4		1	37	8		5

Percentage of convictions .894. Predominant crime, distilling.

CIRCUIT COURT OF CALHOUN COUNTY

Adultery	2		2							
Arson	2		2							
Assault and battery	3		1	2						
Assault to murder	8	3	3	1	1		3			
Assault with weapon	10	7	2	1				4		3
Bastardy	6	2		2	2				1	1
Blackmail	1			1						
Burglary	48	41	3	4			41			
Buying, receiving and concealing stolen property	12	5	1	6			4	1		
Carnal knowledge	4	1	1	2			1			

CIRCUIT COURT OF CHAMBERS COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequis	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Fine	
Abusive language	5	1		3	1					1
Adultery	2			2						
Affray	1		1							
Arson	1	1					1			
Assault and battery	3	2		1						2
Assault to murder	5	3	1	1			3			
Assault to ravish	5	2	2	1				2		
Assault with weapon	22	21	1					21		
Bastardy	2	1		1				1		
Bigamy	2	2					2			
Burglary	12	11		1			11			
Burglary and grand larceny	4	3		1			3			
Buying, receiving and concealing stolen property	2		2							
Carnal knowledge	1	1					1			
Carrying concealed weapon	3	1	1	1				1		
Distilling	17	14	1	2			14			
Disturbing public worship	4	1	2	1				1		
Driving while intoxicated	3	2		1				1		1
Embezzlement	4	1	2		1		1			
Escape	2	1		1				1		

Failure to work road	3	1	2	1	1	
Forfeiture	1		1			
Grand larceny	9	9			9	
Malicious injury to animal	2		2			
Manslaughter	5	5			5	
Murder	9	5	4		5	
Non-support	1	1			1	
Petit larceny	4	3	1		2	1
Rape	1		1			
Temporary use of property	1	1				1
Violating game law	1	1				1
Violation prohibition law	22		8	13	1	
Totals	159	94	26	35	4	56 31 7

Percentage of convictions .591. Predominant crimes, assault with weapon and violating prohibition law.

CIRCUIT COURT OF CHEROKEE COUNTY

Abusive language	1	1				1
Adultery	1		1			
Assault	2	2				2
Assault and battery	2	1	1			1
Assault to murder	1	1			1	

CIRCUIT COURT OF CHEROKEE COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penten- tary	Hard Labor	Jail	
Assault to rob	1			1						
Bastardy	6	1			5			1		
Burglary	3			3						
Buying, receiving and concealing stolen property	2			2						
Carnal knowledge	1	1					1			
Carrying concealed weapon	1		1							
Decoying child	1			1						
Disposing of property under lien	2			2						
Distilling	18	4	1	13			4			
Disturbing public worship	2			2						
False pretense	1			1						
Forgery	1			1						
Grand larceny	2	2					2			
Manslaughter	1	1					1			
Miscegenation	2	1		1			1			
Murder	2	2					2			
Rape	1			1						
Robbery	2	1		1			1			
Seduction	1	1					1			
Trespass	2			2						

Violating Prohibition law.....	12	3	1	8	2	1
Totals	71	22	4	40	14	5

Percentage of convictions .314. Predominant crime, distilling.

CIRCUIT COURT OF CHILTON COUNTY

Abusive language	26	11	2	13		7	4
Arson	1	1			1		
Assault and battery	61	20	4	29	8	15	5
Assault to murder	8	1	2	4	1	1	
Assault with weapon	4	2	1	1		2	
Bastardy	6	2		3	1		2
Burglar's tools, possession of	1			1			
Burglary	7	4	3		4		
Burglary and grand larceny	23	14	1	6	2	14	
Buying, receiving and concealing stolen property	2	1		1		1	
Carrying concealed weapon	11	8	1	2		7	1
Disposing of mortgaged property	1		1				
Distilling	49	36	4	6	3	36	
Disturbing public worship	7	2		5		2	
Driving while intoxicated	24	16	2	6		15	1

CIRCUIT COURT OF CHILTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Embezzlement	5		3	1	1					
False pretense	1		1							
Forgery	1		1							
Manslaughter	4	2		2			2			
Murder	2	2					2			
Petit larceny	26	13		6	7			12		1
Presenting firearms	3	1		2				1		
Public drunkenness	14	9		5				6		3
Reckless driving	10	5		5				2		3
Resisting officer	6	4		2				2		2
Shooting into dwelling	1	1						1		
Trespass after warning	5			5						
Trespass by cutting timber	1		1							
Vagrancy	2				2					
Violating game law	3	1			2			1		
Violating highway law	6	5		1				3	1	1
Violating Prohibition law	209	139	6	45	19		6	118		15
Violating Revenue law	28	8	2	18				5		3
Worthless check	2			1	1					

Totals	560	308	35	170	47	66	200	1	41
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Percentage of convictions .550. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHOCTAW COUNTY

Abusive language	2	1		1					1
Adultery	1		1						
Assault	1			1					
Assault and battery	3	2		1			1		1
Assault to burglarize	1	1					1		
Assault to murder	5	2		2	1				
Assault with weapon	3	1	1	1			1		
Burglary	14	9	1	4			9		
Burglary and grand larceny	3	2	1				2		
Carnal knowledge	1			1					
Carrying concealed weapon	1		1						
Contempt of court	1	1					1		
Cruelty to animals	1	1							1
Disposing of mortgaged property	1			1					
Disturbing public worship	5	3		1	1				3
Grand larceny	6	4		1	1		4		
Manslaughter	1		1						

CIRCUIT COURT OF CHOCTAW COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Murder	3	2	1				2			
Obtaining board by false pretense	1			1						
Petit larceny	5	4	1					1		3
Public drunkenness	2	1			1			1		
Reckless driving	1		1							
Sending threatening letter	1	1	1							
Trespass	1				1					
Trespass and cutting timber	5	3	1	1				1		2
Violating Prohibition law	5		1	2	2					
Worthless check	4			4						
Totals	78	37	12	22	7		19	7		11

Percentage of convictions .474. Predominant crime burglary.

CIRCUIT COURT OF CLARKE COUNTY

[illegible]

CIRCUIT COURT OF CLARKE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequit	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Violating game law	2			2						
Violating prohibition law	22	4	1	15	2			1		3
Violating revenue law	3		1	2						
Violating traffic law	1			1						
Worthless check	4	1	1	2						1
Totals	154	79	14	50	11		41	19		19

Percentage of convictions .512. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CLAY COUNTY

Assault and battery	5	2	2	1						
Assault to murder	2	1	1				1			

Assault to ravish	1	1					1		
Assault with weapon	2		2						
Attempt to distill	3	3					1	2	
Bastardy	1		1						
Burglary	12	12					12		
Burglary and grand larceny	1	1					1		
Carnal knowledge	3	1	1				1		
Carrying concealed weapons	1	1							1
Distilling	25	19	6				19		
Driving while intoxicated	1								
Grand larceny	1	1	1				1		
Incest	2	2					2		
Murder	3	2	1				2		
Petit larceny	5	4	1					2	2
Rape	1	1					1		
Reckless driving	1	1							1
Robbery	1	1					1		
Trespass	3					3			
Vagrancy	1	1						1	
Violating prohibition law	1	1						1	
TOTALS	76	55	13	8			42	7	4

Percentage of convictions .723. Predominant crime, distilling.

CIRCUIT COURT OF CLEBURNE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	2	1	1	1						1
Assault	1	1								1
Assault and battery	1	1						1		
Assault to murder	7	2	2	3			2			
Assault to ravish	1	1					1			
Assault with weapon	3	3						2		1
Attempt to bribe	2		1	1						
Bastardy	2	1	1							1
Bringing stolen property into the state	1	1						1		
Burglary	1			1						
Distilling	83	74	1	8			74			
Grand larceny	2	2		2						
Injury to building	1			1						
Manslaughter	4	3	1				3			
Murder	3	2	1				2			
Petit larceny	3	1	1	2						
Robbery	1		1							
Shooting into dwelling	2	2								2
Violating revenue law	1	1		1						

Violating prohibition law	5	4	1	2	2
TOTALS	126	96	9	21	84
					6

Percentage of convictions .761. Predominant crime, distilling.

CIRCUIT COURT OF COFFEE COUNTY

Abusive language	2						2		
Adultery	4						4		
Arson		2	1	5			2		
Assault	1	1					1		
Assault and battery	12	10	2						
Assault to murder	9	5	3	1			5		
Assault to ravish	3	1		2			1		
Bastardy	2	1	1						
Bigamy	1	1					1		
Burglary	23	18	2	2	1		18		
Carnal knowledge	1			1					
Carrying concealed weapon	2	1	1						
Desertion	2		1	1					
Disposing of mortgaged property	1			1					
Disturbing public worship	1	1							

CIRCUIT COURT OF COFFEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Times Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Driving while intoxicated	2	2						2		
Embezzlement	2		2							
False pretense	2			2						
Fraudulent conveyance	1			1						
Grand larceny	6	6					6			
Manslaughter	2	2					2			
Murder	4	4					4			
Perjury	7		2	5						
Petit larceny	10	4	1	4	1			4		
Possessing still	12	10		2			10			
Public drunkenness	2		1	1						
Rape	1		1							
Reckless driving	1	1						1		
Robbery	1	1					1			
Transporting prohibited beverages	3	2		1			2			
Trespass	1			1						
Violating game law	1			1						
Violating prohibition law	40	26	9	5			9	17		
Violating Sunday law	2	2						2		

[illegible]

Percentage of convictions .618. Predominant crime violating prohibition law.

CIRCUIT COURT OF COLBERT COUNTY

Abusive language	4			2	2				
Affray	2			1	1				
Arson	2	1	1			1			
Assault	2	1		1	1		1		
Assault and battery	6	1	2	2	1				1
Assault to murder	4	2		2		1	1		
Assault to ravish	1	1				1			
Assault to rob	6	5			1		5		
Assault with weapon	10	9		1				8	1
Attempt to commit felony	5	4		1	1			3	1
Bastardy	2					1			
Bigamy	2	1			1		1		
Blackmail	1				1				
Burglary	31	24	3	4			23	1	
Buying, receiving or concealing stolen property	10	5	4	1			3	2	
Distilling	23	8		4	11		8		

CIRCUIT COURT OF COLBERT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Disturbing public worship	2				2					
Forgery	1	1					1			
Grand larceny	13	12	1				12			
Highway robbery	2		2							
Killing dog	1	1								1
Manslaughter	3	3					3			
Murder	5	2	1		1		2			
Petit larceny	7	4			3			2		2
Public drunkenness	3				2	1				
Reckless driving	2	1		1				1		
Trespass	1			1						
Vagrancy	2	2						2		
Violating game law	1		1							
Violating prohibition law	15	4	4	1	6			3		1
Violating revenue law	6			6						
TOTALS	175	92	20	36	27		61	24		7

Percentage of convictions .525. Predominant crime, burglary.

CIRCUIT COURT OF CONECUH COUNTY

Abusive language	2	1			1				1
Altering marks or brands	1								
Assault and battery	2			2					
Assault to murder	8	4	1	2	1		4		
Assault to ravish	1	1					1		
Assault with weapon	8	5		2	1			5	
Burglary	14	12		1	1		12		
Carrying concealed weapon	5	4		1				3	1
Disposing of mortgaged property	2			1	1				
Distilling	10	7			3		7		
Driving auto while intoxicated	1	1						1	
False pretense	1		1						
Forgery	1				1				
Grand larceny	5	5					5		
Manslaughter	1	1					1		
Murder	8	5	2	1			5		
Petit larceny	8	3		2	3			1	1
Rape	1	1					1		
Robbery	1		1						
Trespass	1	1							1
Violating prohibition law	12	5	1	5	1			5	
Violating Sunday law	1			1					

CIRCUIT COURT OF CONECUH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abaled or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Worthless check	1				1					
TOTALS	95	56	6	18	15		36	15	1	4

Percentage of convictions .589. Predominant crime, burglary.

CIRCUIT COURT OF COOSA COUNTY

Assault and battery	1	1						1		
Assault to murder	2	1	1				1			
Attempt to distill	1	1								1
Bastardy	1	1						1		
Burglary	5	5					5			
Disposing of mortgaged property	1	1					1			
Distilling	49	46	2	1			46			
False pretense	2			2						

Grand larceny	1	1	1	1	1	1	1	1	1
Manslaughter	1	1	1	1	1	1	1	1	1
Murder	5	5	5	5	5	5	5	5	5
Petit larceny	1	1	1	1	1	1	1	1	1
Seduction	1	1	1	1	1	1	1	1	1
Violating prohibition law	2	2	2	2	2	2	2	2	2
Worthless check	1	1	1	1	1	1	1	1	1
TOTALS	74	63	6	5	5	59	3	3	1

Percentage of convictions .851. Predominant crime, distilling.

CIRCUIT COURT OF COVINGTON COUNTY

Abusive language	6	5	1	1	3	2	2	3	2
Adultery	4	4	1	1	2	2	2	2	2
Arson	1	1	1	1	8	3	3	3	3
Assault and battery	19	11	4	4	5	5	5	5	5
Assault to murder	7	5	1	1	3	3	3	3	3
Attempt to commit felony	4	3	1	1	2	2	2	2	2
Bastardy	6	2	3	1	1	1	1	1	1
Burglary	14	12	1	1	12	12	12	12	12
Buying, receiving and concealing stolen property	3	3	1	1	3	3	3	3	3
Carrying concealed weapon	2	2	1	1	2	2	2	2	2

CIRCUIT COURT OF COVINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequis	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Defacing public property	1	1								1
Distilling	6	4	2				4			
Disturbing public worship	9	7		2				4		3
Embezzlement	1	1					1			
False pretense	2	1	1				1			
Forgery	3	2		1			2			
Grand larceny	16	13		2	1		13			
Killing dog	1		1							
Manslaughter	6	6					5	1		
Murder	10	7	3				7			
Petit larceny	23	18	1	3	1			13		5
Presenting firearms	2	1	1					1		
Public drunkenness	6	3		3				2		1
Rape	3	1		2			1			
Reckless driving	1				1					
Robbery	3	3					3			
Trespass	3	1	1	1				1		
Violating highway law	1				1					
Violating prohibition law	36	28	1	6	1		22			6
Violating revenue law	14			14						

Worthless check	5	4	1	1	1	3
TOTALS	218	148	19	43	8	24

Percentage of convictions .678. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CRENSHAW COUNTY

Abusive language	6	2	4			2
Arson	1	1				
Assault and battery	4	3	1			1
Assault and battery with weapon	2	2				2
Assault to murder	9	6	3		6	
Burglary	7	5	2		5	
Carnal knowledge	3	1	2		1	
Carrying concealed weapon	4	4				4
Defamation	1		1			
Disturbing public worship	1		1			
Distilling	28	27	1		27	
False pretense	1		1			
Forgery	3	2	1			
Gaming	4	2	2		2	
Grand larceny	4	3	1		3	
Injury to fruit trees	1	1				1

CIRCUIT COURT OF CRENSHAW COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Fall	
Manslaughter	2	2								
Murder	7	3	3	1			2			
Petit larceny	7	6		1			3			
Operating car without license	1	1		1				6		
Public drunkenness	1			1						
Reckless driving	1	1		1						
Shooting into dwelling	1	1		1						
Trespass	5			5						
Vagrancy	1			1						
Violating auto law	13	4	2	7				4		
Violating game law	2			2						
Violating prohibition law	30	24	2	4				20		4
Violating revenue law	4			4						
Violating Sunday law	2			2						
Worthless check	1			1						
TOTALS	157	97	11	49			49	41		7

Percentage of convictions 617. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CULLMAN COUNTY

Abduction	1	1					1		
Abusive language	13	7	6						7
Adultery	1			1					
Arson	1		1						
Assault and battery	6	5	1				1		4
Assault to murder	7		6	1					
Assault to ravish	2	1	1				1		
Assault with weapon	5	5							5
Bastardy	1				1				
Bigamy	1	1					1		
Burglary	7	6	1				6		
Burglary and grand larceny	7	3	1				3		
Carnal knowledge	1	1					1		
Carrying concealed weapon	7	4		1	2		3	1	
Decoying child	2			2					
Defacing public property	1			1					
Disposing of mortgaged property	11	1		8	2		1		
Distilling	21	8	4	9			8		
Disturbing public worship	1	1					1		
Driving while intoxicated	2			2					
Embezzlement	5	1	1	3			1		
False pretense	11		1	10					
Forgery	5	3	1	1			3		
Grand larceny	5	4		1			4		
Killing dog	1		1						

CIRCUIT COURT OF CULLMAN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequitis	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Malicious injury to animal	1			1						
Moving farm produce	1		1							
Murder	1	1					1			
Obstructing railroad	1	1					1			
Peace proceedings	1				1					
Petit larceny	15	6	3	6				3	2	1
Presenting firearms	1			1						
Public drunkenness	7	4		3						4
Reckless driving	2	2								2
Robbery	3	3					3			
Seduction	1			1						
Selling unregistered securities	2	2					2			
Slander	2	1		1						1
Transporting liquor	1			1						
Trespass	4		2	2						
Vagrancy	6			6						
Violating prohibition law	5	3		2						3
TOTALS	179	75	31	67	6		40	6	2	27

Percentage of convictions .418. Predominant crime, distilling.

CIRCUIT COURT OF DALE COUNTY

Abusive language	4	2	1	1				1	1
Adultery	2	2							2
Assault	1	1							1
Assault and battery	7	6	1					2	4
Assault to murder	3	2		1					
Bastardy	3		1	1	1				
Burglary	9	9						9	
Burning woods	1		1						
Buying, receiving and concealing stolen property	2		1		1				
Carnal knowledge	1	1						1	
Carrying concealed weapon	1	1							1
Distilling	20	16	1	3				16	
Disturbing public worship	2		1	1					
Failure to work roads	2			2					
Grand larceny	7	7						7	
Kidnapping	1			1					
Manslaughter	1	1						1	
Murder	3	3					1	2	
Petit larceny	4	2		2					
Public drunkenness	1			1					
Reckless driving	2	1	1						1

CIRCUIT COURT OF DALE COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Seductions	1	1	1				1			
Violating game law	2	2	1	1						
Violating highway law	1	1		1						
Violating prohibition law	11	5	2	4				3		2
Violating revenue law	4			4						
TOTALS	96	60	11	23	2	1	39	9		11

Percentage of convictions .625. Predominant crime, distilling

CIRCUIT COURT OF DALLAS COUNTY

Abusive language	2			2							2
Assault and battery	4	3		1				1			
Assault to murder	9	4	1	2	2		4				
Assault to ravish	1	1					1				

Assault to rob	1	1					1		
Assault with weapon	14	6		6	2			3	3
Bad check			4						
Bastardy	1	1							1
Burglary	30	24		6			24		
Carnal knowledge	1	1					1		
Carrying concealed weapon	23	18		5				1	17
Disposing of mortgaged property	3	2		1			1	1	
Distilling	41	33		7	1		33		
Embezzlement	1	1							1
Escape from jail	1	1							1
Forgery	5	4		1			4		
Grand larceny	24	19		3	2		19		
Hit and run	1	1							1
Keeping gaming table	1				1				
Manslaughter	5	5					5		
Meddling with auto	1	1							1
Murder	13	11	2				3	8	
Obtaining property by false pretense	1	1						1	
Perjury	1				1				
Permitting gaming table in hotel	1	1							1
Petit larceny	15	15						5	2
Receiving stolen property	1				1				8
Reckless driving	4	2		1	1			1	
Robbery	1	1							1
Selling unregistered securities	1				1				
Trespass after warning	1			1					
Throwing rock into train	1	1						1	
Unregistered dealer in securities	1								

CIRCUIT COURT OF DALLAS COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Using steel traps	1			1						
Violating prohibition law	22	17	1	3	1		2	6		9
Violating revenue laws	2			2						
Violating tobacco stamp laws	1	1								1
TOTALS	240	176	4	46	14	3	104	20	2	47

Percentage of convictions .733. Predominant crime, burglary.

CIRCUIT COURT OF DEKALB COUNTY

Arson	9			7	2					
Assault	2	2								2
Assault to murder	4		2	2				2		
Assault with weapon	2	2								
Bastardy	1	1								1

Burglary	8	7	1	1	7	1	7
Disposing of property covered by lien	2		1	1			
Distilling	32	21		11		21	
Embezzlement	2	1	1	1		1	
Forgery	1			1			
Grand larceny	6	2		4		2	
Manslaughter	1	1				1	
Murder	8	4	4			4	
Petit larceny	1	1					1
Placing obstruction on railroad	1			1			
Robbery	1	1				1	
Violating prohibition law	1		1				
TOTALS	82	43	9	28	2	37	4

Percentage of convictions 524. Predominant crime, distilling.

CIRCUIT COURT OF ELMORE COUNTY

Aiding an escape	1	1					1
Arson	1	1				1	
Assault and battery	10	9		1		8	1
Assault to murder	8	6		1	1	6	
Assault to ravish	1	1				1	

CIRCUIT COURT OF ELMORE COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Bastardy	4	1		2	1			1		
Burglarly	7	4		1	2		4			
Burglary and grand larceny	27	18	4	5			18			
Buying, concealing and receiving stolen property	1	1	1							
Carnal knowledge	1	1					1			
Carrying concealed weapon	4	2		2				2		
Desertion	1	1		1						
driving while intoxicated	1	1	1							
Disposing of property under lien	2	1		1				1		
Distilling	38	24	7	7			24			
Embezzlement	8	4		3	1		4			
Failing to stop after accident	1	1		1				1		
False pretense	1	1								
Forgery	3	1		2			1			
Grand larceny	14	11	1	2			11			
Incest	1	1								
Issuing false receipts	2	2					2			
Murder	11	8		3			8			
Obscene language	1		1							
Petit larceny	10	8		1	1			8		

[illegible]

Percentage of convictions .663. Predominant crime, distilling.

CIRCUIT COURT OF ESCAMBIA COUNTY

Abusive language	6	4	2					4	
Assault and battery	7	4	2	1					4
Assault to murder	4	3	1						
Assault to rob	8	8						3	
Assault with weapon	9	7	1	1				8	
Bigamy	1	1							1
Burglary	33	25	1	2	5			1	
Buying, receiving and concealing stolen property	9	2	2	4	1			25	
Carrying concealed weapon	2	1	1					2	
Distilling	5	5						1	
Driving while intoxicated	2	2						5	
Embezzlement	7			7					1

CIRCUIT COURT OF ESCAMBIA COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
False pretense	5	1	2	2				1		
Forgery	12	11		1			8	3		
Grand larceny	15	7	1	7			7			
Leaving scene of accident	5	3		1	1			2		1
Malicious injury to animal	3	1	1	1						1
Manslaughter	1	1					1			
Mayhem	7	6			1		6			
Murder	3	2	1				2			
Petit larceny	10	9		1				9		
Robbery	3	3					3			
Trespass after warning	3			3						
Violating game law	4		3		1					
Violating highway law	1			1						
Violating prohibition law	20	14	1	4	1		6	5		3
Violating revenue law	4		2	1	1					
Violating voting law	9	4		5			4			
Worthless check	5	1	2	1	1					1

TOTALS	203	125	23	43	12	18	32	12
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Percentage of convictions .615. Predominant crime, burglary.

CIRCUIT COURT OF ETOWAH COUNTY

Adultery	2			1	1			
Aiding prisoner to escape	1			1				
Arson	2	1			1	1		
Assault and battery	6	2		2	2		2	
Assault to murder	42	12	1	26	3	10	2	
Bastardy	1			1				
Bigamy	1			1				
Breach of peace	3			3				
Burglary	40	25	1	14		25		
Carnal knowledge	5	1		4		1		
Carrying concealed weapon	1			1				
Disposing of mortgaged property	5	1		4		1		
Distilling	39	22	4	13		22		
Embezzlement	8	1	1	6		1		
False pretense	1			1				
Forgery	8	3		3		3		
Grand larceny	70	39	1	27	3	39		

CIRCUIT COURT OF ETOWAH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Kidnapping	2				2					
Murder	22	16	3		2		16			
Perjury	1				1					
Petit larceny	4				4					
Presenting firearms	1				1					
Public drunkenness	2				2					
Rape	3		1		2					
Reckless driving	2				1					
Robbery	22	10	2	10			10			
Seduction	4			4						
Temporary use of auto	2			2						
Throwing bomb	1			1						
Vagrancy	3			3						
Violating prohibition law	11	4	2	4	1			4		
TOTALS	315	137	16	147	15		129	8		

Percentage of convictions 434. Predominant crime grand larceny.

CIRCUIT COURT OF FAYETTE COUNTY

Abusive language	1	1							1
Assault and battery	9	9						3	6
Assault to murder	1	1						1	
Attempt to commit felony	4	4							4
Bastardy	1						1		
Burglary	7	2	2				3	2	
Carnal knowledge	1	1						1	
Disposing of mortgaged property	1						1		
Distilling	23	21	1				1	21	
False pretense	3						1	2	
Forgery	1						1		
Grand larceny	4	2	2					2	
Manslaughter	1	1						1	
Miscegenation	2	1					1	1	
Murder	1	1						1	
Petit larceny	2	1					1	1	
Presenting firearms	1						1		
Public drunkenness	1	1							
Reckless driving	1	1					1		1
Robbery	3	3						3	

CIRCUIT COURT OF FAYETTE COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Fail	
Violating prohibition law	8	4	4	4	—	—	—	2	—	21
TOTALS	76	53	5	16	2	—	33	6	—	14

Percentage of convictions .697. Predominant crime, distilling.

CIRCUIT COURT OF FRANKLIN COUNTY

Assault and battery	1	1	—	—	—	—	—	—	—	1
Assault to murder	1	—	—	1	—	—	—	—	—	—
Assault to ravish	1	1	—	—	—	—	1	—	—	—
Assault with weapon	3	3	—	—	—	—	3	—	—	—
Attempt to commit felony	2	2	—	—	—	—	—	2	—	—
Burglary	7	6	—	1	—	—	6	—	—	—
Carnal knowledge	3	1	—	1	1	—	1	—	—	—

Distilling	12	9	3					9	
Grand larceny	3	2	1					2	
Incest	1		1						
Murder	9	6	2		1			6	
Petit larceny	3	3							3
Robbery	1	1						1	
Seduction	2	1			1			1	
Violating prohibition law	1	1						1	
TOTALS	50	37	6	5	2			31	4

Percentage of convictions .740. Predominant crime, distilling.

CIRCUIT COURT OF GENEVA COUNTY

Abusive language	4	1		3					1
Arson	1		1						
Assault and battery	10	6	1	3			2		4
Assault to murder	8	3		5			3		
Assault to rob	1	1					1		
Attempt to commit felony	1			1					
Bastardy	5	2	2	1			2		
Burglary	16	11	3	2			11		
Buying, receiving or concealing stolen property	4	4					4		

CIRCUIT COURT OF GENEVA COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Carnal knowledge	1				1					
Carrying concealed weapon	3	1	1	1				1		
Disposing of mortgaged property	3	1		2						1
Disposing of property under lien	3			3						
Disturbing public worship	2			2						
Driving while intoxicated	1	1						1		
Embezzlement	2			2						
Escape	4	1		1	2			1		
False pretense	10	2	1	4	3			2		
Forgery	5	1		4			1			
Grand larceny	12	12					12			
Manslaughter	3	3					2		1	
Murder	10	10					10			
Peace proceeding	4			4						
Petit larceny	9	6	2		1			6		
Presenting firearms	1	1						1		
Public drunkenness	1	1								1
Reckless driving	2			2						
Sodomy	1	1					1			

Temporary use of auto	3	3							1	2
Trespass	2				2					
Vagrancy	2				1	1				
Violating game law	2				2					
Violating highway law	1	1							1	
Violating prohibition law	34	24	4	6			12	11		1
Violating revenue law	6		1	5						
TOTALS	177	97	15	57	8		57	29	1	10

Percentage of convictions .548. Predominant crime, violating prohibition law.

CIRCUIT COURT OF GREENE COUNTY

Abusive language	1				1					
Arson	1	1					1			
Assault and battery	8	6	1	1				5		1
Assault to murder	8	7	1					4		3
Assault with weapon	11	9		2				7		2
Attempt to commit felony	1	1								1
Burlary	11	10	1				10			
Carrying concealed weapons	27	17	3	7				12		5
Cruelty to animals	1	1						1		
Disposing of mortgaged property	4						4			

CIRCUIT COURT OF GREENE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Distilling	10	8	1	1	—	—	7	—	—	1
Disturbing public worship	1	—	—	1	—	—	—	—	—	—
False pretense	2	—	—	2	—	—	—	—	—	—
Forfeiture	4	3	—	1	—	—	—	—	—	3
Grand larceny	21	13	2	6	—	—	9	4	—	—
Murder	14	8	1	5	—	1	7	—	—	—
Petit larceny	7	6	1	—	—	—	—	5	—	1
Placing obstacle on Railroad	1	1	—	—	—	—	1	—	—	—
Violating game law	1	1	—	—	—	—	—	—	—	1
Violating prohibition law	27	21	1	5	—	—	—	10	—	11
TOTALS	161	113	12	36	—	1	35	48	—	29

Percentage of convictions .701. Predominant crimes, carryiny concealed weapons and violating prohibition law.

CIRCUIT COURT OF HALE COUNTY

Abusive language	8	7				1						7
Adultery	1	1										1
Assault and battery	5	5										5
Assault and battery with weapon	17	15	1			1						5
Assault to murder	7	6				1						6
Assault to ravish	4	3				1						3
Attempt to distill	2	2										
Burglary	16	15				1						15
Carrying concealed weapon	12	8				2						1
Destroying fence	1	1										
Disposing of mortgaged property	2	2										2
Distilling	7	5	2									5
Disturbing public worship	3	3				3						
Embezzlement	1					1						
Escape from jail	3	3										3
Forgery	1	1										1
Grand larceny	11	8				1						8
Manslaughter	2	2										1
Murder	5	5										4
Obtaining money by false pretense	1					1						
Petit larceny	10	9				1						4
Possessing still	8	6	1			1						6
Receiving stolen property	1	1				1						
Reckless driving	5	5										1
Robbery	3	2				1						2

CIRCUIT COURT OF HALE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Selling cotton between suns	3	3						1		2
Temporary use of vehicle	3	3						1		2
Trespass after warning	5	2		3				1		1
Violating prohibition law	25	19		5	1			5		14
TOTALS	172	138	4	23	7	1	53	28	6	48

Percentage of convictions .802. Predominant crime, violating prohibition law.

CIRCUIT COURT OF HENRY COUNTY

Assault and battery	2	2						1		1
Assault and battery with weapon	1	1						1		
Assault to murder	1	1					1			
Bastardy	2	2								2

Burglary	12	8	4	8				
Buying, receiving or concealing stolen property	3		3					
Carnal knowledge	1		1					
Distilling	4	1	2	1				
Disturbing public worship	1		1					
Embezzlement	1		1					
Forgery	6	2	4	2				
Gaming	2		2					
Grand larceny	7	7		7				
Manslaughter	6	3	2	3				
Murder	3	2	1	2				
Petit larceny	2	1	1	1				1
Possessing still	4	2	2	2				
Public drunkenness	1		1					
Removing property under lien	4		3					
Trapping	1		1					
Trespass	1		1					
Unlawful escape	1		1					
Violating prohibition laws	6		6					
Violating revenue laws	1		1					
TOTALS	73	32	5	36	26	2	4	

Percentage of convictions 438. Predominant crime, burglary.

CIRCUIT COURT OF HOUSTON COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	1		1							
Arson	10	1	2	7			1			
Assault and battery	15	9	1	5				2		7
Assault to murder	4	2	1	1						2
Bastardy	2	2						1		1
Bigamy	1	1					1			
Burglary	30	24		6			24			
Conspiracy	1			1						
Distilling	25	3	1	21			1	1		1
Disturbing women	1			1						
Embezzlement	3			3						
False pretense	4		1	3						
Forgery	8	3		5			3			
Grand larceny	6	2		4			2			
Incest	1	1					1			
Manslaughter	1	1					1			
Murder	4	2	1	1			2			
Obtaining board by fraud	1			1						
Petit larceny	3		1	2						
Possessing a still	3	3					3			

[illegible]

Percentage of convictions .360. Predominant crime, violating prohibition law.

CIRCUIT COURT OF JACKSON COUNTY

Abusive language	3	1	1	1	1
Accessory after fact				1	
Assault	3		1	2	
Assault to murder	9	5	1	3	2 3
Assault to ravish	2	2			2
Assault to rob	3			3	

CIRCUIT COURT OF JACKSON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequi's	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault with weapon	4	1			3			1		
Attempt to commit felony	1			1						
Bastardy	1	1								1
Burglary	32	15			14		15			
Buying, receiving or concealing stolen property	1			1						
Carrying concealed weapon	2	1		1				1		
Distilling	35	29	3	2	1		29			
Disturbing public worship	3			3						
Failure to pay for cotton	1	1					1			
Failure to work road	1			1						
False pretense	2			2						
Forgery	7	1		6			1			
Grand larceny	6	1	1	3	1		1			
Incest	1		1							
Malicious injury to property	1	1						1		
Murder	14	6	4	4			6			
Petit larceny	6	3	1	1	1			3		
Public drunkenness	10	3		7				1		2
Rape	8	8					8			
Reckless driving	1				1					

Seduction	2				2			
Trespass	1				1			
Vagrancy	8				8			
Violating game law	2				2			
Violating prohibition law	36	11	1		16	8	3	5
Worthless check	1				1			
TOTALS	208	90	14		88	16	68	15
								7

Percentage of convictions .441. Predominant crime, violating prohibition law.

CIRCUIT COURT OF JEFFERSON COUNTY

Abusive language	15	1	2	12				1
Adultery	4			4				
Aiding prisoner to escape	1			1				
Arson	20	7	4	9		7		
Assault and battery	109	52	8	41	8			41
Assault to murder	83	49	4	23	7	37		12
Assault to ravish	7	4			3	4		
Assault to rob	16	9	1	6				1
Assault with weapon	5		1	2	2			
Attempt to commit felony	42	33	2	7				20
Bastardy	26	1	1	20	4			1

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Pentiten- tiary	Hard Labor	Jail	
Bigamy	1			1						
Blackmail	1			1						
Breach of promise	10			8	2					
Burglary	420	380	12	27	1		301	79		
Burglary and grand larceny	70	7	9	51	3		3	4		
Buying, receiving or concealing stolen property	77	57	1	13	6		26	29	2	
Carnal knowledge	8	3		4	1		3			
Carrying concealed weapon	6		2	4						
Conspiracy	1			1						
Contributing to delinquent child	5	1		4				1		
Defamation	1			1						
Desertion and non-support	33	10	3	20			2	8		
Disposing property under lien	6		2	4						
Distilling	129	65	12	32	20		65			
Disturbing public worship	2			2						
Driving while intoxicated	4	1		1	2				1	
Embezzlement	35	8	2	24	1		7	1		
False entry in bank books	10	1		9			1			
False pretense	15	2	2	10	1			2		
Forgery	93	67	2	23	1		24	43		

Grand larceny	436	304	23	81	28	190	114	
Incest	1	1				1		
Loitering in auto	2			2				
Malicious injury to animals	1		1					
Malicious injury to property	2			2				
Malicious mischief	9	3	1	5			1	2
Manslaughter	64	54	4	6		34	18	2
Murder	103	57	21	23	2	55		
Obstructing Railroad track	1	1				1		
Obtaining lodgings by fraud	1			1				
Peace proceedings	2			2				
Perjury	2	2				2		
Petit larceny	167	144	8	9	6		142	2
Placing poison on premises of another	1			1				
Presenting firearms	4	2		2			2	
Public drunkenness	17	1	3	9	4		1	
Rape	9	3	3	3		3		
Reckless driving	17	6	3	8			3	3
Resisting officer	2	1		1			1	
Robbery	131	82	15	33	1	82		
Shooting across public road	1				1			
Subornation of perjury	2			2				
Temporary use of auto	2	1		1			1	
Throwing into dwelling	2			2				
Throwing tear gas bomb	2			2				
Trespass	9		2	6	1			
Unlawful riding on train	2			2				
Vagrancy	37	6		30	1		5	1
Violating barber law	32	2	1	27	2		1	

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Pentenary	Hard Labor	Jail	
Violating cosmetology law	29	1	15	13				1		
Violating game law	9	2		7				1		1
Violating highway law	9	1		6	2			1		
Violating plumbing law	2			2						
Violating prohibition law	236	52	92	90	2		24	18		10
Violating Revenue law	38	3	1	33	1					3
Violating securities law	8			8						
Violating stock law	1				1					
Worthless check	25	4	2	19				4		
TOTALS	2673	1491	265	803	114	2	880	557	7	45

Percentage of convictions .557. Predominant crime, grand larceny.

CIRCUIT COURT OF LAUDERDALE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Assault	3	3						3		
Assault to murder	11	7	2	1	1		5			2
Assault to ravish	1			1						
Assault to rob	1				1					
Attempt to commit felony	6	6					4			2
Bastardy	3	2			1		2			
Bigamy	1	1					1			
Burglary	29	23	4		2		23	1		
Buying, receiving and concealing stolen property	6	6					4	1		1
Carnal knowledge	1	1					1			
Distilling	33	22	3	6	2		22			
Embezzlement	15	7		8			7			
False pretense	2	1		1						1
Forgery	2	1			1		1			
Grand larceny	14	13		1			13			
Manslaughter	3	2	1				1	1		
Murder	6	6					6			
Perjury	2	2					2			
Public drunkenness	1	1								1
Robbery	4	3	1				3			

Violating prohibition law	7	3	2	2	3	
TOTALS	151	110	11	20	98	7

Percentage of convictions .728. Predominant crime, distilling.

CIRCUIT COURT OF LAWRENCE COUNTY

Aiding prisoner to escape	4	1	3			1
Arson	1	1			1	
Assault and battery	1	1				1
Assault to murder	9	4	1	4	4	
Assault to rob	1	1				
Assault with weapon	2	2				2
Attempt to commit felony	1	1				1
Burglary	17	10	2	3	2	10
Disposing of mortgaged property	1			1		
Distilling	48	21	4	19	4	21
Embezzlement	1			1		
False pretense	1			1		
Forgery	4	1	1	2		1
Grand larceny	12	6	1	3	2	6
Manslaughter	3	3				3
Murder	5	4		1		4
Robbery	3	2	1			2

CIRCUIT COURT OF LAWRENCE COUNTY--(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating prohibition law	1				1					
TOTALS	115	57	11	38	9		52	5		

Percentage of convictions .495. Predominant crime, distilling.

CIRCUIT COURT OF LEE COUNTY

Arson	2			2						
Assault	1	1								1
Assault to murder	9	7	1	1			6			1
Assault to ravish	1	1					1			
Assault to rob	1		1							
Assault with weapon	8	7		1				4		3
Attempt arson	1			1						

Burglary	26	22	4			22	
Burglary and grand larceny	3	1	2			1	
Carnal knowledge	1	1				1	
Carrying concealed weapon	2		2				
Disposing of mortgaged property	1	1				1	
Distilling	79	61	2	15	1	61	
Embezzlement	1				1		
Escape jail	1	1					1
Grand larceny	28	23	1	4		21	2
Leaving scene of accident	1	1				1	
Manslaughter	5	5				5	
Mayhem	1		1				
Murder	6	3	3			3	
Petit larceny	1		1				
Placing obstruction on railroad	1	1				1	
Practicing medicine without license	1	1				1	
Violating prohibition law	6	2	2	2			2
TOTALS	187	139	14	32	2	123	8 1 7

Percentage of convictions .743. Predominant crime, distilling

CIRCUIT COURT OF LIMESTONE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Abusive language	2	1	1	1	1				1	
Accessory after fact	1	1						1		
Arson	1	1	1				1			
Assault and battery	5	3		2				2	1	
Assault to murder	14	8	3	3			8			
Assault with weapon	5	5						5		
Attempt commit felony	1	1	1				1			
Bastardy	1			1						
Burglary	28	20	3	4	1		20			
Buying, receiving and concealing stolen property	1	1	1				1			
Carnal Knowledge	1			1						
Disposing of mortgaged property	4	1	1	3				1		
Distilling	49	37	4	8			37			
Disturbing public worship	2	1	1	1				1		
Embezzlement	1			1						
False pretense	1			1						
Forgery	1			1						
Grand larceny	14	10		3	1		10			1
Malicious injury to property	2	1		1						
Manslaughter	3	3					3			

Murder	11	6	4	1	6	3
Petit larceny	11	3		8		1
Public drunkenness	1	1				
Reckless driving	1			1		
Robbery	2	2			2	
Violating prohibition law	34	17	8	9	15	2
Violating revenue law	1	1				1
Worthless check	2			2		
TOTALS	200	124	22	52	103	64

Percentage of convictions .620. Predominant crime, distilling

CIRCUIT COUR OF LOWNDES COUNTY

Arson	1	1			1	
Assault and battery	1			1		
Assault to murder	3	2	1		2	
Burglary	38	33		4	33	
Burglary and grand larceny	1	1			1	
Carrying concealed weapon	2	1		1		1
Concealing stolen property	2	2			2	
Distilling	1	1			1	
Grand larceny	2	2			2	

CIRCUIT COURT OF LOWNDES COUNTY (Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Manslaughter	3	2		1			2			
Murder	8	7	1			1	6			
Petit larceny	1	1						1		
Vagrancy	1			1						
Violating game law	3	1		2				1		
Violating prohibition law	4	3	1					3		
TOTALS	71	57	3	10	1	1	50	6		

Percentage of convictions .802. Predominant crime, burglary.

CIRCUIT COURT OF MACON COUNTY

Arson	2	1	1				1			
Assault and battery	1	1								1

Assault to murder	11	4	2	2	3	4	1
Assault with weapon	1	1					1
Attempt to burglarize	1	1					1
Burglary	7	6	1			6	
Burglary and grand larceny	20	16	3	1		16	
Buying, receiving and concealing stolen property	1		1			1	
Carnal knowledge	1	1				1	
Carrying concealed weapon	1	1					1
Conspiracy to murder	1			1			
Distilling	8	5	2	1		5	
Escape jail	1	1					1
Forgery	1	1				1	
Grand larceny	16	13		2	1	13	
Grand larceny and receiving stolen property	5	4		1		4	
Manslaughter	5	4			1	4	
Murder	18	13	1	1	3	12	
Petit larceny	5	4	1				3
Rape	2	1	1			1	
Reckless driving	1	1					1
Selling mortgaged property	4	4				4	
Temporary use of auto	1	1					1
Transporting liquor	1	1				1	
Trespass to cut timber	1			1			
Violating game law	1		1				

CIRCUIT COURT OF MACON COUNTY, (Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating prohibition law	9	4		5				1		3
TOTALS	126	89	14	15	8	1	73	8		7

Percentage of convictions .706. Predominant crimes, burglary and grand larceny.

MADISON COUNTY

Adultery	8		1	5	2					
Alfray	3	1	1	1						1
Arson	3	3					3			
Assault to murder	23	12	3	5	3		6	4	1	1
Assault to ravish	1	1					1			
Assault with weapon	18	10	4	3	1			5	1	4
Attempt to commit felony	15	5	1	3	6			2		3

Bastardy	3	2			1		2		
Bigamy	1			1					
Burglary	7	5			2		5		
Burglary and grand larceny	30	22	4	2	2		22		
Buying cotton after sundown								1	
Buying, receiving and concealing stolen property	2	1		1					
Buying, receiving and concealing stolen property	6	4	1	1			1		2
Carrying concealed weapon	18	10	2	3	3				10
Carnal knowledge	2			1	1				
Compounding felony	1								
Decoying child	1		1						
Defamation	2	1		1					1
Destroying public property	1				1				
Distilling	10	6		1	3		6		
Disturbing public worship	4		1	2	1				
Disposing of mortgaged property	4	2	1	1			2		
Driving while intoxicated	6	1	1	4					1
Embezzlement	2			1	1				
False pretense	7	2	2	2	1		2		
Failing to bury dead animal	1		1						
Fighting in public	2	2							2
Forgery	24	7	2	14	1		7		
Gaming	16	3		13					3
Grand larceny	49	25	4	5	15		25		
Incest	2	2					2		
Larceny from person	5	3	1	1			3		
Leaving scene of accident	4			4					
Lottery	1				1				
Malicious mischief	4	1	1	2					1
Manslaughter	9	8		1			3	5	

CIRCUIT COURT OF MADISON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Murder	22	12	7	3			12			
Non-support	1		1							
Obscene language	39	13	7	14	5			1	2	10
Public drunk	35	12	3	14	6					12
Perjury	4		3	1						
Petit larceny	39	28	4	4	3			23	2	3
Robbery	4	2	2				2			
Resisting officer	3		1	1	1					
Reckless driving	21	8	3	9	1					8
Shooting across road	2	1		1						1
Shooting into dwelling	1				1					
Sodomy	1	1					1			
Throwing into dwelling	2	1	1							1
Trespass	6	1	1	4						1
Trespass and cutting timber	4	3	1					3		
Unlawful riding train	2	2								2
Vagrancy	21	3		12	6			1		2
Violating auto law	4	3		1						3
Violating game law	1				1					
Violating highway laws	12	7	5							7

Violating insurance laws	5	3	1	1				3
Violating motor carrier laws	5	4	1					4
Violating prohibition	182	81	19	46	36	7	10	64
Violating revenue	51	33	1	9	8		2	31
Violating stock law	4	2	1	1				2
Violating Sunday law	4	2	1	1				2
Worthless check	6	3	2	1			3	
TOTALS	776	364	93	204	115	110	63	184

Percentage of convictions .469. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARENGO COUNTY

Abusive language	1			1		
Assault and battery	3	1		2	1	
Assault to murder	16	9		7	8	
Assault to rob	1	1			1	
Assault with weapon	2	2				1
Attempt to commit felony	7	7				7
Bond forfeiture	11	7	4			7
Burglary	13	12		1	12	
Carrying concealed weapon	11	8		3		7
Distilling	18	14	2	2	14	

CIRCUIT COURT OF MARENGO COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Embezzlement	1				1					
False pretense	1	1								1
Forgery	1				1					
Grand larceny	12	7	3	2			4	3		
Manslaughter	2	2					2			
Murder	2	1			1		1			
Petit larceny	5	2	1	2				2		
Temporary use of auto	1	1						1		
Trespass	1	1						1		
Violating prohibition law	9	1			8					1
Worthless check	1				1					
TOTALS	119	77	10	32			42	16		19

Percentage of convictions .647. Predominant crime, distilling.

CIRCUIT COURT OF MARION COUNTY

Abusive language	4				4				
Adultery	2	1			1				1
Assault and battery	11	4	1		5	1			3
Arson	2							2	
Assault to murder	3	1	1		1				1
Bastardy	9	4	3		2			1	
Burglary	1	1							
Buying, receiving and concealing stolen property	1	1						1	
Carnal knowledge	3	2			1			1	1
Carrying concealed weapon	3				3				1
Disturbing public worship	1	1							1
Embezzlement	2				2				
Escape	1	1						1	
Grand larceny	9	7			2			7	
Incest	2	1	1					1	
Malicious injury to animal	1		1						
Malicious injury to property	1				1				
Murder	2	2						2	
Non-support	1	1							1
Petit larceny	5	3			2				2
Public drunkenness	5	3	1		1			1	2
reckless driving	5	4	1						4
Resisting officer	1				1				
Seduction	3							3	
Trespass	2	1	1						1

CIRCUIT COURT OF MARION COUNTY (Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating game law	7	2	1	4						2
Violating highway law	3	2		1						2
Violating prohibition law	19	12	4	3				1	1	10
TOTALS	109	56	15	37	1		16	5	1	34

Percentage of convictions .513. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARSHALL COUNTY

Abortion	1			1						
Abusive language	5	1	1	3				1		
Adultery	1			1						
Assault	4	4						1	3	
Assault and battery	10	5	1	4				1		4

Assault to murder	5	1	1	1	1	2	1	1	1
Assault to rob	2	2					2		
Aiding escape	1			1					
Bastardy	2	2					1	1	
Bribery	2				2				
Burglary	8	1			7		1		
Buying, receiving and concealing stolen property	3	2			1		1	1	
Carnal knowledge	2				2				
Carrying concealed weapon	1				1				
Disposing of mortgaged property	4				4				
Distilling	40	19	1	20			19		
Disturbing public worship	2					2			
Embezzlement	5			5					
False pretense	1			1					
Forgery	7	1	1	5			1		
Grand larceny	26	11	1	12	2		11		
Manslaughter									
Miscegenation	2	2					2		
Murder	3	2			1		2		
Permitting minor to play pool	21	8	2	11			8		
Petit larceny	1			1					
Public drunkenness	4	4					2	2	
Rape	5			5					
Reckless driving	1	1					1		
Seduction	1			1					
Slot machine, operation	1			1					
Trespass	1			1					
Trespass and cutting timber	3			3					
Vagrancy	1			1					

CIRCUIT COURT OF MARSHALL COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Violating prohibition law	21	5	2	11	3	—	1	—	—	4
Violating securities law	1	—	—	1	—	—	—	—	—	—
Violating stock law	2	—	—	2	—	—	—	—	—	—
TOTALS	201	71	11	109	10	—	49	8	6	8

Percentage of convictions .353. Predominant crime, distilling.

CIRCUIT COURT OF MOBILE COUNTY

Abusive language	35	26	2	1	6	—	—	21	5	—
Adultery	2	—	—	—	2	—	—	—	—	—
Affray	10	8	1	—	1	—	—	8	—	—
Aiding escape	3	2	—	—	1	—	—	2	—	—
Arson	1	—	1	—	—	—	—	—	—	—

Assault	8	8						6	2
Assault and battery	83	51	10	3	19			45	6
Assault to murder	50	23	2		25		19	4	
Assault to rape	6	3			3		2	1	
Assault to rob	9	5			4		2	3	
Assault with weapon	27	19	2	3	3			18	1
Attempt to commit felony	30	29			1		2	21	4
Bastardy	13	5	2	3	3			3	2
Bigamy	1			1					
Bringing stolen money into Alabama	1				1				
Burglary	139	117	2	4	16		66	51	
Burglary and grand larceny	17	11	1		5		4	7	
Burglary of railroad car	2				2				
Buying, receiving and concealing stolen property	18	10	2	1	5			9	1
Carnal knowledge	19	6	3	2	8		5	1	
Carrying concealed weapon	15	8	1		6			7	1
Carrying pistol on lands of another	3	3						2	1
Catching oysters by dredge	2	2						2	
Concealing a felon	1		1						
Concealing property under lien	3	3			3				
Conspiracy	2	2						1	1
Contempt of court	3	3							3
Cutting timber from school lands	1				1				
Decoying child	3			3					
Defamation	1				1				
Defaulting juror	1	1							1
Disposing property under lien	11				11				
Distilling	93	49	3	5	36		25	22	2
Disturbing public worship	6	4		1	1			3	1

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Doing business as labor agent	1				1					
Drawing dangerous weapon	4	2	1		1			2		
Driving while intoxicated	48	36	2	1	9			30	6	
Duelling	7	7						6	1	
Embezzlement	45	19		3	23		6	10	1	2
Escape	1	1						1		
False pretense	16	1			15			1		
Forgery	54	22			32		13	9		
Grand larceny	122	62	2	5	53		19	43		
Incest	1	1					1			
Leaving scene of accident	18	9		2	7			8	1	
Malicious injury to animal	3	1	1		1			1		
Malicious injury to property	6	5			1			4		1
Misbranding insecticides	1	1						1		
Manslaughter	31	18	1		12		12	6		
Murder	44	21	5	1	17	4	17			
Non-support	1	1						1		
Nuisance	3	2			1			2		
Obtaining board by fraud	1		1							
Operating gaming table	1			1						

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating prohibition law	235	97	9	10	119			87	9	1
Violating revenue law	16	3	1		12			3		
Violating tick law	1				1					
Worthless check	60	3		2	55			1	2	
TOTALS	1,695	876	74	84	661	5	224	564	68	15

Percentage of convictions .516. Predominant crime, violation of prohibition law.

CIRCUIT COURT OF MONROE COUNTY

Abusive language	5	4		1				4	
Aiding prisoner to escape	1			1					
Arson	5	2	1		2		2		
Assault and battery	7	2		3	2			2	

Assault to murder	2	2						2				2		
Assault to ravish	2	2						2				2		
Assault with weapon	6	3					2	1				2		1
Bastardy	2						2							
Burglary	22	18					1	3				18		
Carnal knowledge	4	1					2	1				1		
Carrying concealed weapon	2	2										2		
Disposing of mortgaged property	6						4	2						
Distilling	4	3					1					3		
Failure to work road	1						1							
Grand larceny	9	5					1	2				5		1
Leaving scene of accident	1	1												
Malicious injury to animal	3						2	1						
Malicious injury to property	1	1												
Manslaughter	3	3										3		1
Murder	11	10					1				2	8		
Petit larceny	8	4					4							4
Rape	1	1									1			
Reckless driving	1	1												1
Violating game law	4						2							
Violating prohibition law	17	9					6	2				4		5
TOTALS	128	74	6	32	16	3	48	21						2

Percentage of convictions .578. Predominant crime, burglary.

CIRCUIT COURT OF MONTGOMERY COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Pentten-tiary	Hard Labor	Jail	
Abusive language	2	2								2
Aiding prisoner to escape	1	1					1			
Arson	1	1					1			
Assault and battery	38	35	1	2				25		10
Assault to murder	40	16	6	18			16			
Assault to rape	4	4					4			
Assault to rob	2	1	1				1			
Attempting to aid prisoner to escape	3	3					3			
Bribery	1	1					1			
Burglary	43	28	5	10			28			
Carnal knowledge	4	4					4			
Carrying concealed weapon	9	5	1	3				2	3	
Distilling	35	28	3	4			28			
Disturbing public worship	1			1						
Disposing of mortgaged property	2	1		1			1			
Driving while intoxicated	1	1								1
Embezzlement	11	5		6			5			
False pretense	3	2		1			2			
Forgery	12	10		2			10			
Grand larceny	305	276	9	20			276			

CIRCUIT COURT OF MORGAN COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Not a Prosecution	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Fine	
Altering public record	1	1					1			
Arson	4	1	3				1			
Assault and battery	1	1						1		
Assault to murder	21	8	3	7	3		8			
Assault with weapon	2	2								2
Bastardy	1	1								1
Bigamy	1	1					1			
Burglary	74	40	16	17	1		40			
Carnal knowledge	2		2							
Disposing of mortgaged property	3			3						
Distilling	37	27	1	9			27			
Embezzlement	5			3	2					
False pretense	5	1		4			1			
Forgery	5	1	2	1	1		1			
Grand larceny	27	14	3	10			14			
Incest	1	1					1			
Manslaughter	2	1	1				1			
Murder	17	12	5				12			
Perjury	4		1	3						
Petit larceny	2	2						1		1

Rape	4	4							
Robbery	8	6	2					4	
Seduction	1			1					6
Violating prohibition law	3	2		1				1	
Violating securities law	5			5					1
TOTALS	236	126	39	64	7	4	115	2	5

Percentage of convictions .533. Predominant crime, burglary.

CIRCUIT COURT OF PERRY COUNTY

Arson	2	1	1					
Assault and battery	1	1	1					
Assault to murder	12	4	1	6	1		4	
Assault to rob	1	1					1	
Assault with weapon	14	14						10
Burglary	13	10	2	1	1		10	2
Burglary of railroad car	1	1					1	
Carrying concealed weapon	12	6	5	1				2
Disposing of mortgaged property	4		2					4
Distilling	6	5	1				5	
Driving while intoxicated	1	1						1
False pretense	3	1		2			1	

CIRCUIT COURT OF PERRY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Fail	
Manslaughter	4	4					3			1
Moving farm produce between suns	8	5		3				1		4
Murder	3	1		2		1				
Petit larceny	4	4						3		1
Practicing medicine without license	1	1								1
Reckless driving	1	1								1
Trespass after warning	2	1		1				1		
Violating game law	1	1								1
Violating prohibition law	29	21	1	7			14			7
TOTALS	123	82	5	33	3	1	39	17	2	23

Percentage of convictions .666. Predominant crime, violating prohibition law.

CIRCUIT COURT OF PICKENS COUNTY

Assault and battery	3			3					
Assault to murder	4	4			1	1			2
Attempt to commit felony	3	3							3
Bastardy	2	1	1						
Bond forfeitures	4	4							4
Burglary	11	10		1	10				
Carrying concealed weapon	2		1	1					
Contempt of court	1				1				
Disposing of mortgaged property	1			1					
Distilling	30	24	3	3				20	2
Driving while intoxicated	1	1							1
Forgery	1	1			1				
Grand larceny	5	1	2	2				1	
Manslaughter	1	1						1	
Murder	5	5			5				
Peace proceedings	1		1						
Petit larceny	6	3		3				2	1
Presenting firearms	1	1							1
Public drunkenness	1	1							1
Reckless driving	1			1					
Seduction	1			1					
Shooting into railroad car	1						1		
Trespass	3		2	1					
Violating game law	1	1						1	
Violating prohibition law	7	5	2					2	3

CIRCUIT COURT OF PICKENS COUNTY (Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Fall	
Violating revenue law	1									
TOTALS	98	66	13	17	2		40	8		18

Percentage of convictions .673. Predominant crime, distilling.

CIRCUIT COURT OF PIKE COUNTY

Abusive language	1	1						1	
Arson	4	2	1	1			2		
Assault	1	1						1	
Assault and battery	8	5	1	2				4	1
Assault to murder	20	12	5	3			12		
Attempt to bribe	1			1					
Bastardy	1			1					

Burglary	36	31	5	31	1	31	
Burglary in freight car	2		1		1		
Burglary and grand larceny	3	3		3			
Carnal knowledge	1		1				
Carrying concealed weapon	4	3	1			3	
Cruelty to animals	1	1					1
Disturbing public worship	1	1					
Driving while intoxicated	1		1				
False pretense	2	1	1			1	
Forgery	6	6		6			
Grand larceny	8	7	1			7	
Manslaughter	3	1	1	1		1	
Murder	7	3	3	3		3	
Obtaining board by false pretense	1		1				
Perjury	1	1		1		1	
Petit larceny	3	1	2				1
Possessing still	33	27	1	27			
Rape	1	1		1			
Receiving stolen property	1		1				
Removing property under lien	1	1				1	
Violating prohibition law	16	11	1	11		11	
Worthless check	1		1				
TOTALS	169	120	18	31		94	3

Percentage of convictions .714. Predominant crime, burglary.

CIRCUIT COURT OF RANDOLPH COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Aated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Assault	1		1							
Assault to murder	7		2	5						
Assault to ravish	1	1					1			
Assault with weapon	4	4						3		1
Bastardy	2	1		1				1		
Bigamy	1			1						
Burglary	6	5		1			5			
Burglarly and grand larceny	3	3					3			
Buying, receiving or concealng stolen property	4	1	2	1			1			
Carrying concealed weapon	1		1							
Distilling	62	48	6	8			48			
False pretense	1		1							2
Forfeiture	3	2	1							
Forgery	1	1					1			
Grand larceny	6	3		3			3			
Manslaughter	6	6					5	1		
Mayhem	1									
Murder	8	6	1	1			6			
Petit larceny	6	3	1	2				3		
Possessing a still	1	1					1			

Rape	1	1				1
Reckless driving	2	1	1			1
Robbery	4	1	2	1		1
Trespass	1			1		
Violating prohibition law	9	5	3	1		4
TOTALS	142	93	19	29	1	80
						10
						3

Percentage of convictions .654. Predominant crime, distilling.

CIRCUIT COURT OF RUSSELL COUNTY

Abandonment	1		1				
Abusive language	2		2				
Affray	2		2				
Arson	2	2			2		
Assault and battery	23	16	7			12	4
Assault to murder	20	12	5	3			
Bigamy	1		1				
Burglary	40	31	4	5		31	
Buying, receiving or concealing stolen property	3	2	1	1		1	1
Carnal knowledge	1		1				
Conspiracy	5		5				
Carrying concealed weapon	6	4	2			3	1

CIRCUIT COURT OF RUSSELL COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Defamation	1		1							
Disposing mortgaged property	2	1	1							1
Distilling	25	11	6	8			11			
Embezzlement	13	1	6	6			1			
Escape	2		2							
False pretense	5	1	1	3	1			1		
Grand larceny	21	16		5			16			
Malicious injury to animal	4	1	1	2						1
Manslaughter	4	4					3			1
Miscegenation	6	6					6			
Murder	6	4	1	1			4			
Petit larceny	24	15	1	8				14		1
Presenting firearms	1			1						
Public drunkenness	1	1						1		
Reckless driving	5	2	1	2						2
Resisting officer	1			1						
Robbery	1		1							
Seduction	2			2						
Shooting into dwelling	1			1						
Trespass	1	1						1		

Violating game law	1			1				
Violating prohibition law	44	27	6	11				17
Violating revenue law	6	2	3	1				2
TOTALS	283	160	51	71	1		87	50
								23

Percentage of convictions .565. Predominant crime, violation of prohibition law.

CIRCUIT COURT OF ST. CLAIR COUNTY

Abusive language	6	1	1	3	1		1
Arson	1			1			
Assault and battery	7	1		6			1
Assault to murder	3	1	1	2		1	
Assault to ravish	1			1			
Burglary	1	1	1			1	
Burglary and grand larceny	7	4	1	2		4	
Buying, receiving or concealing stolen property	3	1	2		1		
Carnal knowledge	1			1			
Carrying concealed weapon	4	2	2		2		
Distilling	22	16	5	1		16	
Disturbing public worship	4	3		1		3	
Failure to work road	1			1			
Gaming	5			5			

CIRCUIT COURT OF ST CLAIR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abarred or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	10	8	1	1			8			
Malicious injury to property	1	1		1						
Murder	6	3	3				3			
Obstructing public road	1			1						
Public drunkenness	2	1		1				1		
Reckless driving	3	3		3						
Robbery	4	1	1	2			1			
Seduction	1			1						
Vagrancy	4			4						
Violating game law	1			1						
Violating prohibition law	17	5	3	9			5			
Violating stock law	4			3	1					
TOTALS	120	48	15	55	2		42	6		

Percentage of convictions 400. Predominant crime, distilling.

CIRCUIT COURT OF SHELBY COUNTY

Abusive language	6	4	1	1				4
Adultery	2			2				
Arson	1				1			
Assault and battery	3		2	1				
Assault to murder	13	5	3	5			5	
Assault with weapon	5	3		2				3
Attempt to commit felony	8	8						1
Bastardy	4		1	2	1			7
Burglary	24	18	2	1	3		18	
Burglary and grand larceny	3	3					3	
Buying, receiving or concealing stolen property	6	4	1	1			2	2
Carnal knowledge	3		2	1				
Carrying concealed weapon	2	1	1					1
Distilling	86	69	11	5	1		69	
Driving while intoxicated	1	1						1
Embezzlement	4	1		3			1	
Escape	9	9						9
Failure to work road	1		1					
False pretense	4	1		3			1	
Grand larceny	14	8	1	4	1		8	
Highway robbery	3	3					3	
Injury to buildings	1		1					
Manslaughter	4	3		1			3	
Murder	10	6	3	1			6	
Perjury	1		1					1

CIRCUIT COURT OF SHELBY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Petit larceny	16	4	2	10				4		
Public drunkenness	3			3						
Robbery	2	1	1				1			
Seduction	1		1							
Selling unregistered stock	2	1		1			1			
Trespass after warning	1			1						
Unregistered dealer in stock	2	1		1			1			
Vagrancy	1			1						
Violating game law	6			5	1					
Violating prohibition law	22	13	2	5	2		1	11		1
Violating revenue law	2			2						
Violating stock law	4	4					4			
TOTALS	280	171	37	62	10		127	36		8

Percentage of convictions .610. Predominant crime, distilling.

CIRCUIT COURT OF SUMTER COUNTY

Accepting deposit knowing bank insolvent	1				1					
Aiding in attempt to commit felony	1				1					
Arson	1		1							
Assault and battery	6	3	1	2						3
Assault to murder	19	13	2	4						
Assault to ravish	1	1							1	
Assault with weapon	5	4	1							2
Bond forfeiture	14	11			3					11
Breaking jail	2	2								
Burglary	26	24		1	1				24	
Burglary of railroad car	1	1							1	
Buying, receiving or concealing stolen property	1	1							1	
Carnal knowledge	1	1								
Carrying concealed weapon	5	4		1					1	3
Distilling	22	19		1	2				17	2
Embezzlement	5				5					
False entry	1				1					
False pretense	1	1								1
Forgery	2			1	1					
Grand larceny	7	5		1	1				5	
Injury to public property	1	1								1
Manslaughter	2	2							2	
Murder	10	9	1						9	
Perjury	1				1					
Petit larceny	6	6								3

CIRCUIT COURT OF SUMTER COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequis	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penten- tary	Hard Labor	Jail	
Robbery	2	1		1			1			
Selling unregistered securities	1			1						
Shooting into dwelling	1	1								1
Shooting into train	1	1					1			
Vagrancy	1			1						
Violating prohibition law	2	1		1						1
TOTALS	150	112	6	15	17		71	14	1	26

Percentage of convictions .746. Predominant crime, burglary.

CIRCUIT COURT OF TALLADEGA COUNTY

Abusive language	1	1							1	
Arson	1				1					

[illegible]

Percentage of convictions 329. Predominant crime, burglary.

CIRCUIT COURT OF TALLAPOOSA COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abortion	1				1					
Assault	3		1		2					
Assault and battery	1				1					
Assault to murder	12	10			2		10			
Assault to ravish	1				1					
Assault with weapon	6	1	1		2			1		
Bastardy	4		1		3					
Burglary	7	6			1		6			
Burglary and grand larceny	9	5	3		1		5			
Buying, receiving or concealing stolen property	2		2							
Carnal knowledge	1	1					1			
Carrying concealed weapon	1									
Cruelty to animals	1				1					
Distilling	10	5			4		5			
Embezzlement	3		1		2					
False entry (bank)	2				2					
Grand larceny	3	1			2		1			
Incest	2	1			1		1			
Manslaughter	1	1						1		
Murder	5	3	2				3			

[illegible]

Percentage of convictions .353. Predominant crimes, assault to murder.

CIRCUIT COURT OF TUSCALOOSA COUNTY

Abusive language	4	3	1	3
Adultery	1	1		1
Aiding an escape	1	1		
Arson	4	2	2	2
Assault	2		2	

CIRCUIT COURT OF TUSCALOOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Assault and battery	14	10		4			1			9
Assault to murder	15	7	1	7			7			
Assault to rob	2	1		1			1			
Assault with weapon	20	12		8			1			11
Attempt to commit felony	37	36		1				3		33
Bastardy	3	2		1						2
Bigamy	1	1					1			
Burglary	57	41	2	13	1		41			
Burglary and grand larceny	35	27		8			26	1		
Buying and selling by false weights	2	1		1				1		
Buying, receiving or concealing stolen property	9	2		7			1			1
Carnal knowledge	2	1	1				1			
Carrying concealed weapon	1			1						
Conspiracy	3			3						
Disposing mortgaged property	2	2						1		1
Disposing property under lien	2	1		1				1		
Distilling	74	59	6	9			59			
Disturbing public worship	2			2						
Driving while intoxicated	17	9	2	6						9
Embezzlement	18	6		8	4		5	1		

[illegible]

CIRCUIT COURT OF TUSCALOOSA COUNTY—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Jail	
Worthless check	2	1		1						1
TOTALS	558	361	31	155	11		218	23		120

Percentage of convictions .664. Predominant crime, distilling.

CIRCUIT COURT OF WALKER COUNTY

Abusive language	12	3	5	4						3
Adultery	1	1								1
Assault and battery	17	7	1	7	2			2		5
Assault with weapon	7	3	1	2	1					3
Assault to murder	19	18	1				18			
Assault to ravish	3	1		2			1			1
Bastardy	7	5		1	1			1		4

Burglary	25	22	2	1	22		
Carnal knowledge	5	1	4		1		
Carrying concealed weapon	9	4	5		1		3
Distilling	15	10	4		10		
Disturbing public worship	8	3	5			1	2
Driving while intoxicated	5	3	2			2	1
Embezzlement	2		2				
Extortion	2		2				
False pretense	4		4				
Forgery	8	6	2		6		
Gaming	2		2				
Grand larceny	20	10	7	2	9	1	
Malicious injury to animal	1		1				
Manslaughter	16	15	1		14		1
Murder	6	1	3		1		
Obscenity	1	1					1
Petit larceny	21	11	5		10		1
Presenting firearms	3	1	2				1
Public drunkenness	16	6	10				6
Reckless driving	3	1	1				1
Robbery	6	5	1		5		
Seduction	4		4				
Trespass	6	3	1				3
Vagrancy	3	2	1				2

CIRCUIT COURT OF WALKER COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penten-tiary	Hard Labor	Jail	
Violating prohibition law	72	37	8	25	2		5	20		12
Worthless check	1	1					1			
TOTALS	330	181	28	112	9		79	52		50

Percentage of convictions .548. Predominant crime, violation of prohibition law.

CIRCUIT COURT OF WASHINGTON COUNTY

Abusive language	11	4	1	4	2			2	2	
Allowing hogs to run at large	1		1							
Arson	2			2						
Assault and battery	8	4	2		2			2		2
Assault to rob	1			1						
Assault with weapon	8	1	2	2	3					1

Burglary	4	4						4
Burning woods	3	1	2					1
Carrying concealed weapons	5	2	1	2				
Defacing public property	4	4	4					
Distilling	5	3	1	1				3
Disturbing public worship	1	1		1				
Dynamiting fish	3	2		1				2
Forgery	2		1	1				
Gaming	1						1	
Grand larceny	2		2					2
Interfering with labor	1			1				
Killing bees	1						1	
Killing dog	2		1	1				
Leaving scene of accident	1			1				
Marking cow	1	1						1
Murder	6	4	1					4
Non-support	3			1	2			
Petit larceny	8	2	4		2			2
Possessing still	1		1					
Presenting firearms	2	1		1				1
Racing horse on highway	1	1						1
Seduction	1			1				
Shooting into dwelling	1	1						1
Trespass	2		2					
Unlawful assembly	3			2	1			
Violating auto law	3			2	1			
Violating game law	9	3	4	2				3
Violating prohibition law	9	1	3	4	1			1

CIRCUIT COURT OF WASHINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Hard Peniten- tary	Hard Labor	Jail	
Violating revenue law	1			1						
TOTALS	117	37	32	31	17		13	9	2	13

Percentage of convictions .316. Predominant crime, abusive language.

CIRCUIT COURT OF WILCOX COUNTY

Assault and battery	3	2		1						2
Assault to murder	8	4	1	2	1		4			
Assault with weapon	4	3		1				1		2
Burglary	30	26	2	2			26			
Carnal knowledge under 12	1	1					1			
Carrying concealed weapon	3	1								1
Curtain in poolroom	1				1					
Disposing of mortgaged property	1			1						

Distilling	2	2							2	
Driving while intoxicated	1					1				
Embezzlement	1					1				
False pretense	2					2				
Grand larceny	11	9				2			9	
Manslaughter	8	7					1		6	1
Murder	3	1				1			1	
Permitting minor to play pool	1						1			
Petit larceny	5	1				3				1
Possessing still	16	12	1			3			12	
Public drunkenness	3	3								3
Rape	1						1			
Robbery	1					1				
Selling unregistered securities	1						1			
Vagrancy	1					1				
Violating prohibition law	6	4	1				1		4	
TOTALS	114	76	6	24	8			61	6	9

Percentage of convictions .666. Predominant crime, burglary.

CIRCUIT COURT OF WINSTON COUNTY

Abusive language	3	2				1			2	
Adultery	6	4				2			4	

CIRCUIT COURT OF WINSTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten- tiary	Hard Labor	Fall	
Arson	2			2						
Assault and battery	7	5			2			4	1	
Assault to murder	6	2	4				2			
Attempt to commit felony	7	7						4		3
Bastardy	6	3		3			3			
Burglary	5	4		1			4			
Carnal knowledge	4	2		2			2			
Carrying concealed weapon	1			1						
Disposing of mortgaged property	2	1		1				1		
Distilling	29	21	3		1		21			
Disturbing public worship	8	4		4				4		
False pretense	1			1						
Grand larceny	17	12	2	2	1		12			
Malicious injury to property	1			1						
Murder	5	5					5			
Petit larceny	3			3						
Public drunkenness	9	7	2					3	4	
Removing property under lien	1		1							
Robbery	2	2					2			
Seduction	1			1						

INDEX

"A"

ABSENTEE BALLOTS:

Candidates cannot handle.....	556
How forwarded to voters.....	543
Last day on which may be issued.....	267
Probate Judge when candidate cannot handle.....	540
Request for necessary.....	562
Tabulation of.....	272

ACCOUNTANTS:

Counties, when may employ.....	623
--------------------------------	-----

ACKNOWLEDGMENTS:

Judges of Probate must charge for taking.....	496
---	-----

ACTS, 1919:

Page 282, Section 246.....	586
Page 282, Section 361, Schedule 78.....	487
Page 282, Section 363.....	611

ACTS, 1923:

Page 152, Section 56.....	238
Page 178.....	39

ACTS, 1927:

Page 139, Section 7.....	342
Page 139, Section 19.....	340
Page 274.....	515
Page 348.....	331

ACTS, 1931:

Page 165.....	383
Page 218.....	157
Page 259.....	573
Page 279.....	571
Page 280.....	23, 60, 578
Page 298.....	105
Page 337.....	20
Page 435.....	5, 163, 197
Page 636.....	143
Page 671.....	59
Page 812.....	340
Page 857.....	29

ACTS, 1932:

Page 12.....	8
Page 21.....	502
Page 35.....	101
Page 178.....	270

Page 183.....	584
Page 282.....	191, 463
ACTS, 1933:	
Page 32.....	392
Page 113.....	383
Page 199.....	479
Page 200.....	533
ADVERTISEMENTS:	
Local Bills, payment of.....	207
AGRICULTURAL CODE, 1927:	
Section 31 construed.....	180
AGRICULTURE AND INDUSTRIES, DEPARTMENT OF:	
Attorneys, employment of.....	180
ALABAMA PUBLIC SERVICE COMMISSION:	
(See Public Service Commission.)	
ALABAMA RELIEF ADMINISTRATION:	
Property of, exempt from taxation.....	614
ALMSHOUSES:	
Medical services for, preferred claim.....	276
AMERICAN LEGION POSTS:	
Filing Fee, Charters.....	99
APPROPRIATIONS:	
Commissioner's Court for relief of storm suffers.....	532
For Pasteur treatment, construed.....	136
Proration of, account Budget Act.....	101
Various State Departments, proration.....	221
ATTORNEYS:	
Collection Agency must procure license, as attorney.....	289
Employment by Courts of County Commissioners.....	92, 106, 435
Employment of, by Department of Agriculture.....	180
Member Legislature employee Railroad may accept pass.....	146
ATTORNEY GENERAL:	
Opinion by, protection afforded officers.....	612
AUDITOR:	
Employment of, by County Board of Education.....	625
AUDITOR, STATE:	
Duties under Budget and Control Act.....	113
Warrants, issuance of.....	3
AUTOMOBILES:	
License tags, weight, how computed.....	270

License Tags for members Commissioners Court.....	31
License Tags exemption, non-resident.....	244
License Tags, exemption, non-resident delivering new cars.....	340
License Tags, National Banks.....	594
In what county license tag shall be taken out.....	428
Transfer of tags when issued on commercial cars.....	573

"B"

BAFFLE BALL MACHINES:

Discussed and defined.....	545
----------------------------	-----

BALLOTS:

Candidates for State Executive Committee, alternate on.....	558
---	-----

BANKS AND BANKING:

Bank deposit constitutes a debt.....	121
Borrowing money for closed Banks discussed.....	8, 502
Building & Loan Associations, investment of funds of.....	324
Collection of taxes against insolvent State Banks.....	345
National Banks not exempt license tax on motor vehicles.....	594
Pledging assets of, to surety on Depository Bond.....	348
State Banks, exemption personal property owned by.....	410
State Banks, in relation to F.D.I. Corporation.....	549
State Banks, operating under restrictions, powers and duties.....	391
When declared insolvent, State has preferred claim.....	296
When share holders must pay taxes.....	402

BEER:

Municipalities, authorizing sale of.....	232
Transportation of, into and through State.....	310

BILLS AND NOTES:

Computation of interest.....	153
------------------------------	-----

BOARD OF ADMINISTRATION:

Purchase of equipment for Convict Department.....	51
---	----

BOARD OF REVIEW:

Duties of.....	95
Meetings of.....	95
Tax Assessor, duties of.....	95
Tax Assessor, while sitting as member of, compensation.....	305

BONDS:

Counties, payment of premium for retirement of.....	261
County depository, pledging securities in lieu of.....	94
County treasurer, School Funds.....	158
State Officers, when must be filed.....	133
Sureties, Blue Sky Bond, liability.....	291

BUDGET AND FINANCIAL CONTROL ACT:

Certified warrants, discussed.....	110
Current revenues for current expenses.....	570
Proration, when deficit indicated.....	101
Refund of license taxes.....	570
State Auditor, duties, re-defined.....	113

BUILDINGS:

Construction of, for Department of Game and Fisheries.....	447
--	-----

BUILDING AND LOAN ASSOCIATION:

Investment of funds of.....	334
Not exempt mortgage or deed tax.....	49
Stock of, subject to assessment.....	157

"C"**CANDIDATES:**

Corrupt Practices Act, failure to comply with.....	119
--	-----

CARMICHAEL, ACT:

Constitutional	479
----------------------	-----

CARNIVALS:

License, when operated in connection with County Fairs.....	25
---	----

CENSUS:

School, payment for taking.....	622
---------------------------------	-----

CHAUFFEURS:

License, drivers employed by C.W.A.....	517
License, operator of school bus.....	7

CIGARETTES:

License, rolling stores.....	38
------------------------------	----

CIRCUIT JUDGES:

Special reporter, appointment of.....	176
---------------------------------------	-----

CITIES:

License, Motor Transportation Terminals.....	13
Warrants of, exempt from State taxation.....	198

CITIZENSHIP:

Pardoned convicts.....	4
------------------------	---

CLAIMS:

Payment of, of prior fiscal year.....	299
---------------------------------------	-----

CLERKS OF CIRCUIT COURT:

Bonds of.....	135
Costs, cannot grant probation for in criminal cases.....	265
Costs in penitentiary cases, when payable by State.....	150
Costs, preliminary hearings Criminal cases, how paid.....	381

Defendant pleading guilty, solicitor's fee and trial tax	204
Fee for making final record in criminal cases	269
Fee, when paid from Fine & Forfeiture Fund	323
Fee, issuing subpoenas before Grand Jury	19, 579
Fee, issuing warrant of arrest	226
Fee, issuing witness certificate, civil cases	302
Fee, seizure	30
Fee, Solicitor's for carrying concealed weapon	156
Fee, Solicitor's, violating Revenue law	66
Fee, while acting as ex-officio Clerk of County Court	219
Fees, making transcripts	370
Witnesses, payment of mileage	6

CODE 1923:

Section 228	281
Section 231	462
Section 303, sub-section 5	42
Section 304	187
Section 375	452
Section 386	263
Section 1926	149
Section 2171	122
Section 2969	224
Section 3022	578
Section 3109	336, 561
Section 3110	166
Section 3140	281
Section 3667	165, 226, 269, 436
Section 3670	150
Section 3741	322
Section 3973	474
Section 4816	90
Section 6975	99
Section 5016	104
Section 5076	190
Section 5498	106
Section 7156-61	36
Section 7221	477
Section 7285	55, 60
Section 8120-34	24
Section 8371	598
Section 9581, subsection 3	36
Section 9581	111
Section 9765	373
Section 10190	325
Section 10191	377
Section 10199	254

CODE 1927:

Sections 241-252	450
------------------------	-----

COMPILATION OF REVENUE LAWS OF 1929:

Section 21.....	58
Section 266.....	55
(See Revenue Compilation 1929)	

COMPTROLLER, STATE:

Appropriation for Pasteur treatment, contrued.....	136
Bills and notes, computation of interest.....	153
Counties, authority to borrow money.....	311
Current revenues for current operations.....	299
Employees of State subpoenaed as witnesses, traveling expenses.....	229
Extradition, per diem fees of agent and guard.....	215
Legislature, member of, issuance of warrants to.....	61
Payment Court costs when suit instituted by State.....	321
Proration of funds when deficit indicated.....	101
Public School Fund, current revenue.....	136
Refund of license taxes.....	570
Refund of licenses, to what fund charged.....	40
Remittances to, must be made in money.....	67
State finances discussed.....	221
Tax Collectors responsibility for receipts furnished by.....	513
Trial tax, amending Act 1931 construed.....	201
Trial tax, when collectible.....	390

CONFESSION OF JUDGMENT:

Sureties, by whom approved.....	71
---------------------------------	----

CONSTABLES:

Arresting fee.....	206
Fees of.....	353

CONSTITUTION 1901:

Section 52.....	258
Section 74.....	169
Section 76.....	258
Section 221.....	342
Section 224.....	394
Section 280.....	108
Section 281.....	193, 205, 322

CONSTITUTIONALITY:

Attorneys Act, providing license on.....	342
Carmichael Act (1933 Special Session, page 199).....	479
Relief Acts.....	406

CONTRACTORS:

License, amount, how figured.....	50
-----------------------------------	----

CONVICTS:

Citizenship, after pardon.....	4
Parole by Circuit Judge after sentence begun.....	317

Transportation of, those working at Capitol.....	173
CORPORATIONS:	
Domestic, franchise tax when in liquidation.....	188
Foreign, Contract with U. S. Government—Taxes.....	170
Foreign, franchise tax.....	584
CORRUPT PRACTICE ACT:	
Effect on candidates, failure to comply with.....	119
COSTS:	
Automobile condemnation proceedings, how paid.....	477
Cannot grant probation for, criminal cases.....	265
Confession of Judgment by defendant, surety.....	71
Criminal cases, by whom and how computed.....	287
Execution for, when defendant sentenced to hard labor.....	436
Feeding prisoners, how paid.....	439
Felony cases, how paid.....	358
Felony cases, when payable by State.....	150, 179
Payment of, when case improperly dismissed.....	445
Payment of, when suit instituted by State.....	321
Re-taxation, effect of on Court and Clerk.....	525
Transcript to Court of Appeals, how paid.....	426
Where defendant sentenced to jail, how paid.....	57
COTTON:	
Not taxable when in hands of producer.....	336
COUNTIES:	
Appropriation for Farm Extension Service.....	394
Appropriation for promotion of Agriculture.....	430
Authority to borrow money.....	311
Bonds, County Treasurers.....	161
Chemical analysis prohibited liquors, payment for.....	324
Claims against, when barred.....	130, 632
Convict camps, building and maintaining.....	596
County Solicitor acting as County Attorney.....	178
Depositories, pledging securities in lieu of bond.....	94
Employment of Assistant to State Tax Commissioner.....	209
Employment of Attorneys.....	92
Employment of Deputy Solicitor by.....	306
Employment Purchasing Agent, authority of.....	76
Fine and Forfeiture Fund, costs, when payable out of.....	300
Gasoline tax, may pledge revenue anticipated from.....	407
Guard at jail, payment of board.....	166
Issuance of interest bearing warrants.....	541
Limitation of actions, county warrants.....	303
Maintenance of roads within municipalities.....	534
Office rent for National Re-employment Service.....	595
Office rent, payment of, for Relief Administration.....	629
Payment premium on bonds of Federal Relief Workers.....	576

Payment of premium for retirement of bonds.....	261
Purchase of gravel pit out of gasoline tax fund.....	249
Sinking fund, use of for current operations.....	621
Use of county gasoline in cars of road hands.....	582
Warrants of, exempt from State taxation.....	198
(See also Courts of County Commisisoners.)	
COUNTY CHILD WELFARE BOARD:	
Chairman	141
COUNTY CLAIMS:	
Who may not deal in.....	104
COUNTY SURVEYORS:	
Bond of, premium paid by County.....	45
COURT OF APPEALS:	
Transcript to and how cost paid.....	426
COURTS OF COUNTY COMMISSIONERS:	
Accountant, when may be employed by.....	623
Appropriation for campaign and bond election.....	544
Appropriation for promotion of Agriculture.....	430
Appropriation for rat eradication.....	542
Appropriation for relief of storm sufferers.....	532
Appropriation for vocational schools.....	195
Appropriation to County Farm Agents.....	394
Appropriation to erect monument.....	462
Attorney, employment of.....	92, 106, 435
Authority to borrow money.....	311
Automobile tags for members thereof.....	31
Bailiff in charge of jury, lodging and board.....	449
Bank may pledge its assets to surety on Depository Bond.....	348
Board of Review, dates for meetings of.....	95
Board of Review, duties of.....	95
Bond of County Treasurer.....	161
Bond of Members of.....	62
Chemical analysis prohibited liquors, payment for.....	324
Claims against County, when barred.....	130, 632
Clerk, Board of Revenue, acting as County Treasurer.....	108
Clerk of, payment of salary from gasoline tax.....	233
Compensation of members for extraordinary services.....	431
Convict camps, building and maintaining.....	596
Construction of bridges by Counties over streams.....	194
Costs, payment of returning prisoners from another State.....	175
County Health Officer, fuel for heating office.....	170
Deeding property to Federal Government.....	456
Designation of depository for County funds.....	296
Employment of relatives of members of.....	190, 304
Gasoline tax, dividing amongst various districts.....	457
Gasoline tax, may pledge revenue anticipated from.....	407

Gasoline tax, use of.....	617
Guard at jail, payment of board.....	166
Issuance of interest bearing warrants.....	541
Maintenance of roads within municipalities.....	329, 534
May punish for contempt.....	308
Medical service for almshouse, preferred claim.....	276
Notice of election, payment for.....	64
Pay of members of, necessary orders.....	266
Payment for book in which to make tax assessment.....	160
Payment for repairs on members of, cars.....	314
Payment for right-of-way for State road.....	493
Payment premium on bonds of Federal Relief Workers.....	576
Poll List.....	111
Poll tax records, reprint of.....	36
Purchasing Agent, employment of.....	76
Purchase of gravel pit out of gasoline tax fund.....	249
Purchase of material from relatives of members of.....	313
Purchase of typewriters for R. F. C.....	308
Right-of-way for State highways, how acquired.....	332
Road apportioner, cannot appoint.....	521
Sale of gasoline by.....	638
Schools, certain supplies furnished to.....	73
Schools, payment for taking school census.....	622
Section 31, Highway Code construed.....	331
Sinking Fund, use of for current operations.....	621
Tax in lieu of road service, fixed by.....	509
Their power and authority.....	316
To whom gasoline may be supplied.....	434

"D"

DEEDS:

Filing tax measured by value of property.....	149
Filing tax, when mortgage filing tax previously paid.....	616
Tax deeds require filing tax.....	639
Tax exemption, branches U. S. Government.....	139

DEMOCRATIC EXECUTIVE COMMITTEE, STATE:

Members of, State officers.....	536
---------------------------------	-----

DEPOSITORIES:

Pledging securities in lieu of bond.....	94
State Text Books, commission due State.....	27

"E"

EDUCATION:

City Board of, qualifications required of members of.....	216
Public School Buildings, use of for private school purposes.....	105

EDUCATION, COUNTY BOARD OF:

Appropriations to County Library Board.....	239
Audit of accounts, payment for.....	158
Auditor, employment of.....	625
Authority of.....	235
Appointment and compensation of enumerators.....	31
Borrowing money under Section 130, School Code.....	571
Certain supplies furnished by Commissioners Court.....	73
Deed in fee simple required for State aid.....	91
District tax, use of for building purposes.....	233, 531
Insurance for buildings, interest on premium.....	598
Issuing warrants against three mill school tax.....	575
Meetings of, dates must be held.....	520
Payment of compensation due members of.....	212
Payment to Divisional Code authority.....	619
Pledging proceeds of County and District taxes.....	214
Reduction of salary of Superintendent of Education.....	489
School busses, requiring liability insurance on.....	458, 486
Treasurer, liability for illegal expenditures.....	284
Trustees, need not be patrons.....	618

EDUCATION, COUNTY SUPERINTENDENT OF:

Employment of clerk.....	276
Removal of residence from county in which he was elected.....	103
Traveling expenses allowance, discontinuance of.....	309
When he assumes office.....	597

EDUCATION, STATE BOARD OF:

Without authority to borrow money.....	286
--	-----

ELECTIONS:

Absentee ballots, how tabulated.....	272
Absentee ballots, last day may be issued.....	267
Absentee ballots, request for.....	562
Age person must be to vote.....	498
Assisting elector at.....	565
Compensation of clerks under absentee ballot law.....	251
Election officers, publication of names of.....	630
Expense of special primary election, how paid.....	379
Names of candidates to be rotated on ballots.....	554, 558
Primary election law 1931 construed.....	417
Primary, withdrawal of one of two highest candidates.....	563
Publication of notices, payment for.....	262

EMPLOYEES, STATE:

Expense of, when traveling on official business.....	226
Traveling expenses, when subpoenaed as witnesses.....	229

EXEMPTIONS:

American Legion Posts, filing fees.....	99
Branches of U. S. Government, deed and mortgage tax.....	139

Counties and municipalities automobile tag tax.....	256
Deaf mutes, insane and blind persons.....	475
Employees of Alabama Boys Industrial School.....	174
Hospitals, ad valorem tax.....	127
Non-residents, automobile license tags.....	244, 340
Poll tax.....	227
Property of Alabama Relief Administration.....	614
Road duty.....	72
Road duty, employees Alabama Insane Hospital.....	446
Road duty, persons under 21 years.....	252
Solicitors, license for practice of law.....	100
Street tax, disabled ex-service men.....	305
Veterans Act 1931, Dentist license.....	89
Veterans Exemption Act 1931, construed.....	79
Veterans, license tax, Motor Carrier Act 1932.....	128
Veterans World War, poll tax.....	151
EXTRADITION:	
Per diem fees of Agent and Guard.....	215
EXPENSES:	
State employees when traveling on official business.....	226
"F"	
FARM EXTENSION SERVICE	
Appropriation by Counties for.....	394
FARM PRODUCTS:	
Licenses, nursery stock.....	123
FEES:	
Clerk Circuit Court, issuing witness certificate.....	302
Clerk Circuit Court, final record, criminal cases.....	269
Clerk Circuit Court, acting as Clerk County Court.....	219
Clerk Circuit Court, issuing warrants of arrest.....	226
Clerk Circuit Court, issuing subpoena for witness before a Grand Jury.....	19
Clerk Circuit Court, making transcript.....	370
Constables.....	353
Judge of Probate, issuing marriage license.....	620
Judge of Probate, transferring auto tag.....	461
Securities, registration of, based on actual value.....	634
Sheriffs, arresting and feeding prisoners.....	211
Sheriff, distilling.....	328, 533
Sheriff, ex-officio, how paid.....	268
Sheriff, executing writ of arrest.....	264
Sheriff, extraditing felons.....	12
Sheriff, removing prisoners under order of Court.....	322
Sheriff, serving process from Justice Court.....	177
Solicitors carrying concealed weapon.....	156
Solicitors, possessing prohibited liquors.....	612

Solicitors, violating Revenue law.....	66
FEDERAL DEPOSIT INSURANCE CORPORATION:	
Does not relieve officers of liability.....	475
FILING FEES:	
American Legion Post.....	99
Mutual Co-operative Associations.....	36
(See Filing Tax)	
FILING TAX:	
Deeds, when mortgage filing tax paid.....	616
Deed to City Board of Education.....	339
Long term leases, how computed.....	566, 568
Measured by value of property.....	149
Mortgages of Federal Savings & Loan Associations.....	639
Mortgages to Home Owners' Loan Corporation.....	544
Mortgages to National Banks.....	46, 202
Mortgages, when National Bank in transferee.....	347
Mortgagee purchaser at foreclosure sale.....	350
Production Credit Associations, exemption.....	593
Tax deeds, requires.....	639
Transfer of mortgage to R. F. C.....	460
Transferee of mortgage, purchaser at foreclosure sale.....	243
Where mortgage specifies payment in cotton, how computed.....	250
FILLING STATIONS:	
License, non-transferable.....	611
FINE AND FORFEITURE FUND:	
Claims against and in what order paid.....	592
Circuit Clerk's fee, when paid out of.....	19, 579
Costs, when payable, out of.....	300
Fees of Circuit Clerks, when paid from.....	323
Payment out of, in what order made.....	42
Payment out of, when case improperly dismissed.....	445
Re-transferring funds to.....	187
Sheriff fee, serving subpoenas, when paid out of.....	555
FORESTS:	
Acquisition of, by Federal Government.....	383
FRANCHISE TAX:	
Domestic Corporation, in liquidation.....	188
FRUIT STANDS:	
Defined.....	398
FUNDS:	
Transfer of various County funds to General Fund.....	230

"G"**GAME AND FISHERIES, DEPARTMENT OF:**

Construction of buildings for..... 447

GARNISHMENT:

State officials and employees..... 640

GASOLINE:

County, use of in cars of road hands..... 582

Sale of, by Commissioners Court..... 638

GASOLINE TAX:

Distribution of one cent tax..... 29

Purchase of gravel pit by County, out of..... 249

U. S. Government, when purchased by..... 298

Use of..... 407, 457, 617

Use of, to match R. F. C. funds..... 285

GOVERNMENT:

Expenses of, discussed..... 33

GUARDIANS:

Veterans, under Uniform Act 1931..... 23

"H"**HEALTH DEPARTMENT:**

Pasteur treatment, appropriations for, construed..... 136

HEALTH OFFICER, COUNTY:

Fuel for heating office furnished by County..... 172

HIGHWAY:

Arrest fee, Motor Carrier Acts..... 539

Contracts for, qualifying under Motor Carrier Act..... 354

County, procuring right-of-way for, payment..... 493

Debris or lumber left on or near right-of-way..... 425

Defined, as set out in Motor Carrier Act 1932..... 123

Disposition of fines for highway violations..... 270

Liability State Highway Department for damages..... 466

Section 31, Highway Code construed..... 331

HOME OWNERS' LOAN CORPORATION:

Mortgages to, no filing tax required..... 544

HOTELS:

Licenses..... 470

HOSPITALS:

Exemption, ad valorem tax..... 127

"I"**INSURANCE:**

Domestic Insurance premium tax, how computed..... 626

Motor Carrier Act 1932, amount, how fixed.....	68
School buildings, interest on premium.....	598
Securities deposited with Superintendent of Insurance.....	412

INTOXICATING LIQUORS:

Pay for chemical analysis of.....	324
Transportation of, into and through State.....	310

"J"

JUDGES:

Fine criminal cases must follow statute.....	519
--	-----

JUDGES OF CIRCUIT COURT:

Salaries of, not reduced during term of office.....	53
---	----

JUDGES OF PROBATE:

Absentee ballots, cannot handle when candidate.....	540
Absentee ballots, last day may be issued.....	267
Acknowledgments taken by Clerk of, as Notary Public.....	624
Acknowledgements taken by, must be charged for.....	496
Application for automobile tag, duties as to.....	341
Bond of, as member Commissioners Court.....	62
Cannot parole convict after sentences begun.....	317
Duties of, when land redeemed at tax sale.....	279
Election officers, publication of names of.....	630
Exemption, branches Federal Government.....	139
Fee, acknowledgment transferring auto tags.....	461
Fee, appointing guardian for war veteran.....	60
Fee, issuing and recording marriage license.....	620
Fee, issuing certificate of purchase.....	55
Filing tax, deeds, how computed.....	572
Filing tax, long term leases, how computed.....	566, 568
Filing tax, mortgage to Home Owners' Loan Corporation.....	424
Filing tax, mortgages to National Banks.....	202
Filing tax, mortgagee purchases at foreclosure sale.....	350
Filing Tax, Mutual Co-operative Associations.....	36
Filing tax, where mortgage specifies payment in cotton.....	250
Filing tax, where National Bank is transferee.....	347
Interest on funds of, when on salary.....	510
Leases, long term, in excess of one year.....	572
Mortgage filing tax, Production Credit Association.....	593
Motor vehicle license tags, weight, how computed.....	270
Partial redemption of real estate.....	628
Preparation poll tax records.....	111
Poll tax records, reprint of.....	36
Recording fees must be charged.....	547
Redemption by mortgagee from tax sale.....	43
Redemption of lands from tax sale.....	167, 338
Redemption of real estate sold for taxes prior to September 13, 1932.....	404
Redemption from tax sale, payment current taxes.....	124

Settlement with various State Agencies, no offset.....	587
Tax deeds require filing tax.....	639
Transcripts of record required to be kept in his office.....	547
Uniform Veteran's Guardianship Act, discussed.....	23
Veteran's Exemption Act 1931, construed.....	79
JUDGMENTS:	
Confession of, by whom surety approved.....	71
JURY DUTY:	
Employees of Alabama Boys' Industrial School.....	174
JURY BOARD:	
Bond of members of.....	62
Clerk of, appointment and payment for services.....	31
Compensation of members of.....	415, 459
Duties of, discussed.....	514
Relative of member of, as clerk.....	514
JURY CERTIFICATES:	
Acceptance of in payment of county taxes.....	177
JUSTICES OF THE PEACE:	
Term of office.....	476
"L"	
LEGISLATURE:	
Acts of, population basis, general law.....	147
Acts of, printing and binding of.....	263
Lieut. Governor, compensation.....	152
Local bills, payment of advertisements.....	207
Member of, when employee of railroad may accept pass.....	146
Members of, State Officers.....	536
Section 52 and 76, constitution, construed.....	258
Speaker of the House, compensation.....	152
The word "House" defined.....	258
Warrants for per diem, members of.....	61
LICENSE INSPECTORS:	
Power to make arrest and duties pertaining thereto.....	421
When not entitled to commissions on fines assessed.....	58
LICENSES:	
Attorney, Collection Agency.....	289
Automobile, members Commisisoners Court.....	31
Automobile tags, exemption, Counties.....	256
Automobile tags, when delinquent.....	246
Based on population.....	37
Carnivals, operated in connection with County Fairs.....	25
Cigarettes, rolling stores.....	38
Chauffeurs, drivers employed by C. W. A.....	517
Chauffeurs, operating school busses.....	7

Colored spectacles.....	196
Contractor's, amount, how figured.....	50
Drivers, non-resident trucks for hire.....	280
Embalmers	411
Eye Glasses.....	411
Filling Station, not transferable.....	611
Finance Company, selling repossessed automobiles.....	47
"Fruit Stands" defined.....	398
Hotels	470
Manufacturers, from knitted cotton cloth.....	349
Marriage fee, Probate Judge.....	620
Money lenders.....	247, 290
Motor vehicles.....	49
Motor vehicles, hauling U. S. mail exclusively.....	273
Motor vehicles, as provided Motor Carrier Act 1932.....	181
Near Beer	21
News Stands.....	231
Nusery stock.....	123
Pawnbrokers, selling pistols.....	487
Peddlers, traveling in vehicles.....	48
Real state salesmen and brokers.....	453
Refund of, to what fund charged.....	40
Slot machines.....	583
Solicitors, private practice of law.....	100
Trailers operating within municipality.....	548
Motor transportation terminals.....	13
Trucks, weight, how computed.....	293
LIQUORS PROHIBITED:	
Sale of, from boat anchored in navigable river.....	613
"M"	
MARRIAGE:	
Fee, Probate Judge issuing license.....	620
MILEAGE:	
Witnesses, Circuit Court.....	6
MONEY LENDERS:	
Licenses	290
MORTGAGES:	
Filing tax, Federal Savings & Loan Association.....	639
Filing tax, National Banks.....	46
Filing tax, Production Credit Association.....	593
Filing tax, U. S. Government, Branches of.....	139
Payment of taxes by mortgagee.....	463
Redemption from tax sale, notice.....	43
Transfer of, to R. F. C. filing tax.....	460

MOTOR CARRIER ACT 1931:

C. O. D. shipments, Surety Bond.....	122
Company conveying own employees in busses.....	129
Construed and discussed.....	13
Construing Section 5.....	468
Filing fees required by, cannot be returned.....	375
Mileage tax, payment of must be in money.....	295
Motor Transportation Terminals, control of.....	13
"Owning, controlling, operating and-or managing" construed.....	608
Section 4 construed.....	471
Section 4 and 5 construed.....	360
Transportation of school students.....	464

MOTOR CARRIER ACT 1932:

Arresting fee.....	539
As pertaining to contractors with Highway Department.....	354
Carrier hauling only for State.....	244
Contract "Carrier" defined.....	590
Distinguishing plates, how furnished.....	131
Effect on contracts entered into prior to passage of.....	384
Exemption World War Veterans, from license tax.....	128
Fee to Secretary of State, disposition of.....	208
Insurance policies and bonds, required by.....	68
Mileage tax, how computed.....	200
"Occasional" as used therein, defined.....	196
"Public highways" as used therein, defined.....	123
Section 39 construed.....	422
Separate permit for contract and common carrier.....	75
Wholesaler delivering goods of another.....	636

MOTOR VEHICLES:

Carrier hauling only for State or its sub-divisions.....	244
Company conveying its employees—Motor Carrier Act 1932.....	129
Distinguishing plates, carriers, replacement of.....	132
Licenses, drivers of non-resident trucks for hire.....	280
License tags, weight, how computed.....	271, 293
License tags, when become delinquent.....	246
License tags, when hauling U. S. mail.....	273
License tags, where should be taken out.....	428
Motor Carrier Act—Fidelity Bond for C. O. D. shipments.....	122
Motor Carrier Act 1932, mileage tax, how computed.....	200
Motor Carrier Act 1932, insurance and bonds.....	68
Motor Carrier Act 1932, licenses.....	181
Motor Carrier Act 1932, "Occasional" defined.....	196
Owned by National Banks, not exempt from license tax.....	594

MUNICIPALITIES:

Cannot authorize sale of beer.....	232
Streets within, maintenance of, by Commissioner's Courts.....	329

MUTUAL CO-OPERATIVE ASSOCIATIONS:

Filing tax.....	36
-----------------	----

"N"**NEWS STANDS:**

Defined	23
---------------	----

NEWSPAPERS:

Selection of by Tax Collector for legal notices.....	586
--	-----

"O"**OFFICERS:**

Clerk Board of Revenue acting as County Treasurer.....	108
County Superintendent of Education, removal of residence.....	103
County Surveyor is County Officer.....	45
Reduction salaries of, during term of office.....	53
Remittances must be made in money.....	67

(See also offices and officers.)

OFFICES AND OFFICERS:

Bonds of, when must be filed.....	133
Clerks of Circuit Court, bonds of.....	135
Clerks of Circuit Court, fees, manuscript.....	370
Constables, fee of.....	353
Justices of the Peace, term of office.....	476
Members of Legislature State Officers.....	536
Protection afforded by opinion of Attorney General.....	612
Sheriffs, Ex-officio fees.....	253
Sparks Amendment, discussed.....	393
Sparks Amendment, as applied to County officers.....	491

"P"**PEDDLERS:**

License, when traveling in vehicles.....	48
--	----

PENSIONS:

Distribution of warrants after death of pensioner.....	224, 236
Widows of Confederate Veterans.....	567

POLL LIST:

Preparation of, by Probate Judges.....	111
--	-----

POLL TAX:

How and amount to be paid.....	633
Payment by former convict after citizenship restored.....	557
Reprint of records, payment for.....	36
Who are exempt from payment of.....	227

PRISONERS:

Cost in certain cases for feeding, how paid.....	439
County,, medical service for, preferred claim.....	276

Removal, from one jail to another, order for.....	90
PROBATION:	
Judges County Courts, authority to grant.....	210
PROPERTY:	
Claims for error in payment of taxes, when must be filed.....	281
Fixtures to apartment houses, real property.....	527
Improperly assessed, how remedied.....	274
Payment of part of taxes by one of joint owners.....	248
Payment of tax, by mortgagee.....	156
Personal, taxes on, collection of when about to be removed out of State	154
PUBLIC SCHOOL FUND:	
When current revenue may be used against.....	136
PUBLIC SERVICE COMMISSION:	
Carrier hauling only for State or its sub-division.....	244
Company conveying its employees.....	129
"Contract carrier" defined and discussed.....	590
Motor Carrier Act 1931, filing fees cannot be returned.....	375
Motor Carrier Act 1931, payment mileage tax must be in money.....	295
Motor Carrier Act 1931, Section 4 construed.....	471
Motor Carrier Act 1931, Section 4 and 5 construed.....	360
Motor Carrier Act 1931, Section 5 construed.....	468
Motor Carrier Act 1932, Section 39 construed.....	422
Motor Carrier Acts 1931-1932, transportation school students.....	464
Motor Carrier Act of 1932, insurance and bond required by.....	68
Motor Carrier Act 1932, Public Highways defined.....	123
Motor transportation, regulation of, by.....	13
"Owning, controlling, operating and-or managing" construed.....	608
Replacing lost distinguishing plate.....	132
Separate permit, contract and common carrier.....	75
Utilities, inspection and supervision fees.....	372
Veterans not exempt license tax under Motor Carrier Act 1932.....	128
Wholesaler delivering goods for another.....	636
PURCHASING AGENT:	
Courts of County Commissioners, employment of.....	76
"R"	
REAL ESTATE COMMISSION:	
License of real estate salesmen.....	453
RECONSTRUCTION FINANCE CORPORATION:	
Superintendent of Banks borrowing money from.....	8
REDEMPTION:	
By mortgagee from tax sale.....	388
Partial, from tax sale.....	561, 628
Real estate sold for taxes, discussed.....	451

Tax sale, amount required to redeem.....	167
Tax sale, payment current taxes.....	124, 279
REFUNDS:	
Licenses, how made.....	40
REGISTERS IN CHANCERY:	
Automobile condemnation proceedings, costs, how paid.....	477
Fiduciary funds, responsibility for.....	194
REGISTRATION:	
Persons becoming 21 years of age in October.....	10
REGISTRARS, BOARD OF:	
Meetings, dates of.....	443, 455, 467
Members of.....	62
Members of cannot appoint substitute.....	604
Notice as to registration of voters.....	515
Notice of Special Registration.....	452
Persons convicted of manufacturing liquor.....	482
Poll tax exemption, Veterans World War.....	151
Reduction in pay of members of.....	274
Registration of voters while engaged in purging list.....	452
RELIEF ADMINISTRATION:	
Payment of office rent for.....	629
REPORTS:	
Solicitors.....	644, 773
REPORTERS:	
Special appointment of.....	176
REVENUE ACTS, 1919:	
Schedule 49, page 282.....	196
Section 362.....	470
REVENUE COMPILATION, 1929:	
Schedule 49.....	349
Schedule 57.....	38
Schedule 117.....	38
Schedule 122, page 282.....	247
Section 252.....	256
(See Compilation of Revenue Laws of 1929.)	
REWARD:	
Sheriffs, when not entitled to.....	217
RIVERS:	
Sale of prohibited liquors from boat anchored in.....	613
ROAD DUTY:	
Employees of Alabama Insane Hospital exempt.....	446
Persons under 21 years exempt.....	252

Sheriff, compensation and duties as to.....	427
Tax in lieu of fixed by Commisisoners Court.....	509
Who are exempt.....	72

"S"

SCHOOLS:

Age at which children may be admitted to.....	255
Amending application for rural school house erection.....	606
Appropriation of Public School Fund.....	450
Appropriation by County Board to County Library Board.....	239
Appropriation of rural school house fund.....	5
Audit of accounts, payment for.....	158, 625
Bonds of City Superintendent and City Treasurer.....	255
Bonds, County Treasurers School Fund.....	158
Borrowing money, limits.....	571
Busses, operators of, licenses.....	7
Cancellation of warrants.....	496
Census, payment for taking.....	31, 622
Conveyance of lands under School Code of 1927.....	433
County Board of Education, authority of.....	235
County Superintendent, traveling expenses.....	309
County Superintendent, when he assumes office.....	597
County Treasurer of, liable for illegal expenditures.....	284
Current revenue, purposes for which may be used.....	136
Deed in fee simple required for State aid.....	91
Disposition of interest on State warrants, discussed.....	500
Distribution of Teachers Training Equalization Fund.....	268
District tax, use of for erection of school buildings.....	233
Educational funds, payment of salaries out of.....	239
Effect of cancellation of warrants.....	199
Employment of clerks by County Superintendent.....	276
Erection, repair and equipment fund, distribution of.....	163, 197
Funds from which bus drivers are paid.....	356
Funds from which teachers are paid.....	356
Hypothecating district school taxes.....	429
Issuing warrants against three mill school tax.....	575
Liability insurance on school busses.....	458
Meeting of County Boards, dates held.....	520
Members of City Boards, qualifications of.....	216
Payment after current obligations are met.....	294
Payment of compensation due members of County Board.....	212
Purposes for which tax money may be pledged.....	214
Public school buildings used for private school purposes.....	105
Scholastic year and fiscal year, expenditure of funds.....	285, 574
School busses requiring liability insurance on.....	486
School trustees, selection of.....	607
State aid, how must be used.....	132
State Board of Education, authority to borrow money.....	286
Status of check deposited by contractor upon failure to execute bond.....	352

Taxes current receipt for current expenditures.....	285, 288
Three mill school tax, use of.....	483, 531
Trustee need not be patron.....	618
Use of district tax for building purposes.....	531
Use of surplus from State refunding bonds.....	575

SCHOOL CODE, 1927:

Section 122.....	31
Section 130.....	571
Section 133.....	607
Section 169.....	276
Section 370.....	5
Section 372.....	197
Section 382.....	228
Section 385.....	199, 496
Sections 387-389.....	433

SECRETARY OF STATE:

Acts of Legislature, printing and binding of.....	263
Commissions, bonds, when must be filed.....	133
Fee required under Motor Carrier Act, disposition of.....	208

SECURITIES:

Deposited with Superintendent of Insurance, discussed.....	412
Exemptions, when registered.....	399
Fees for registration based on actual value.....	634
How must be listed for taxation.....	580
Registration of brewery stock.....	499
Registration of, effect.....	528

SECURITIES COMMISSION, STATE:

Registration of brewer stock.....	499
Sureties of Blue Sky bond, liability.....	291

SHERIFFS:

Arrest fee.....	264
Baffle ball machines, discussed.....	545
Compensation and duties as to road service.....	427
Chief Deputies, reduction of salaries.....	193
Cost, felony cases, when payable by State.....	179
Cost, payment of returning prisoner from another state.....	175
Duties of, when serving papers from Justice Court.....	254
Ex-officio fees, how paid.....	253, 268
Fees, arresting and feeding prisoners.....	211
Fees, distilling.....	328, 533
Fees extraditing felons.....	12, 494
Fees, investigations.....	377
Fees, removing prisoners under order of court.....	322
Fees, seizure, how payable.....	30
Fees, serving subpoenas where no bill is found.....	555
Fees, serving process from Justice Court.....	177

Holding stolen car for reward.....	234
License tags for.....	235
Order for removal of prisoner account of violence.....	90
Reward for making arrest.....	217
Salary of Chief Deputy, how paid.....	462
Toll bridges, issuance of free pass to.....	74
SINKING FUND:	
Counties, use of for current operations.....	621
SLOT MACHINES:	
License	583
SOLICITORS:	
County, acting as County Attorney.....	178, 306
Fees, carrying concealed weapon.....	156
Fees, conviction of possessing prohibited liquors.....	612
Fees, violating Revenue law.....	66
License, private practice law.....	100
Reports	644, 773
Salaries of, reduction of during term of office.....	241
SPARKS AMENDMENT:	
County officers, how affected by.....	491
Effect on contingent funds.....	490
STATE:	
Employees and officials, garnishment.....	640
Expenses of Government.....	33
Payment court costs when suit instituted by.....	321
Payment to Divisional Code authority.....	619
STATUTE OF LIMITATIONS:	
Claims against County, when barred by.....	130, 632
STREETS:	
Within municipality, maintenance by Commissioners Court.....	329
"T"	
TAXATION:	
Assessment protest, who may file.....	238
Attorneys, licenses.....	342
Bank deposit constitutes debt of bank.....	121
Bank excise tax, how computed.....	192
Board of Review, meetings and duties of.....	95
Building & Loan Association not exempt deed tax.....	49
City purchasing property at State and County tax sale.....	359
Collection of taxes against insolvent state banks.....	345
Corporation, foreign, filing fee and franchise tax.....	584
Costs, re-taxation, effect of on court and clerk.....	525
Cotton, when not taxable.....	336
Deed and mortgage tax, exemption, branches U. S. Government.....	139

Deputy Tax Assessor, fees of.....	511
Distribution of one cent gasoline tax.....	29
Error in over payment of taxes, when claim must be filed.....	281
Exemptions, World War Veterans.....	578
Filing fees, American Legion Posts.....	99
Filing tax, deed to City Board of Education.....	339
Filing tax, deeds, how computed.....	572
Filing tax, measured by value of property.....	149
Filing tax, mortgage to Home Owners' Loan Corporation.....	424
Filing tax, mortgages to National Banks.....	202
Filing tax, transferee of mortgage, purchaser at foreclosure sale.....	243
Filing tax, mortgagee purchaser at foreclosure sale.....	350
Filing tax, transfer of mortgage to R. F. C.....	460
Filing tax, where National Bank transferee.....	347
Filing Station, license, not transferable.....	611
Franchise Tax, domestic corporation in liquidation.....	188
Gasoline tax, use of.....	407, 617
Gasoline tax, use of to match R. F. C. funds.....	285
Hospitals, exemption ad valorem tax.....	127
Insolvent banks, payment taxes against shares of stock.....	402
Interest collected when tax payer appeals from assessment.....	518
Jury certificates, payment County taxes.....	177
Leases, long term, filing tax, how computed.....	566
Licenses, based on population.....	38
Licenses, contractor's.....	50
Licenses, embalmers.....	411
Licenses, refund of.....	40
Licenses, hotel.....	470
Licenses, manufacturers, from knitted cotton cloth.....	349
Licenses, money lenders.....	247, 290
Licenses, motor vehicles, weight, how computed.....	270
Licenses, sale of near beer.....	21
Licenses, nursery stock.....	123
Licenses, peddlers, traveling in vehicles.....	48
Licenses, persons selling eye glasses.....	411
Licenses, trailers.....	548
"News stand", defined.....	231
Mortgages, partial redemption, tax sale.....	561
Payment of part of taxes by one of joint owners.....	248
Payment taxes by mortgagee, personal property.....	156
Property that may be levied upon for payment of taxes.....	582
Redemption by mortgagee.....	43, 55
Redemption from tax sale, payment current taxes.....	124
Redemption of real estate sold for taxes prior September 13, 1932.....	404
Redemption from tax sale, amount required.....	167, 279
Securities, how must be listed.....	580
Securities, registered, exemptions.....	399, 528
Tangible personal property on Government reservation.....	408
Tax Assessors fees on interest, delinquent taxes.....	542

Tax Collectors, partial payment to.....	26
Taxable tobacco.....	154
Taxes, current receipts for current expenditures.....	288, 294
Timber, sale of separate from land, taxes.....	405
Trial tax, when collectible.....	390
Warrants of Cities and Counties, exemptions.....	198
TAX ASSESSORS:	
Block and lot book, entries in, compensation for.....	39
City assessments.....	20
Compensation of, as affected by Sparks Amendment.....	393
Compensation of, as member Board of Review.....	305
Duties, relative to Board of Review.....	95
Exemptions, deaf mutes, insane and blind persons.....	475, 578
Fee of, interest on delinquent taxes.....	542
Fixtures to apartment houses, real property.....	527
Payment of fees of, prior to Sparks Amendment.....	522
Payment to, when abstract of assessments filed.....	344
Preparation of book of assessments.....	160
Timber, sale of separate from land, taxes.....	405
When property improperly assessed, how remedied.....	274
TAX COLLECTORS:	
Assessments, Building & Loan Association stock.....	157
Banks and banking, excise tax, how computed.....	192
City purchasing property at State and County tax sale.....	359
Collection taxes against insolvent bank.....	345, 402
Collection taxes personal property which is about to be moved out of State.....	154
Cotton, when not taxable.....	336
Date of final settlement.....	220
Deceased, benefits that inure to personal representative.....	559
Deputy Tax Assesor, fees of.....	511
Exemption, personal property owned by State bank.....	410
Fee, making levy.....	51
Jury certificates in payment County taxes.....	177
Partial payment of taxes.....	26
Payment of part of taxes by one of joint owners.....	248
Payment of taxes by mortgagee.....	463
Payment taxes by mortgagee, personal property.....	156
Penalty for collecting fee not entitled to.....	319
Property that may be levied upon.....	582
Receipts Furnished by State Comptroller, responsibility for.....	513
Securities, must be listed by serial numbers.....	580
Selection of newspaper for legal notices.....	586
Service of notices, how made.....	257
Tax Assessor's fee prior to Sparks Amendment.....	522
Taxpayers appeal from assessment, interest collected.....	518
TAX COMMISSION, STATE:	
Banks, excise tax, how computed.....	192

Fees of Deputy Tax Assessor.....	511
Who may file written objection with Board of Review.....	238
TAX SALE:	
Purchaser at, notice to mortgagee.....	43
TERMINALS:	
Motor transportation, licenses for and control of.....	13
TEXT BOOK DEPOSITORY, STATE:	
Commisisions due State.....	27
THREE MILL SCHOOL TAX:	
Use of.....	483
Use of for building purposes.....	531
TIMBER:	
Assessment of, when sold separate from land.....	405
TOBACCO:	
What tobacco is taxable.....	154
TOLL, BRIDGES:	
Issuance of free pass to sheriffs.....	74
TRIAL TAX:	
Amending Act of 1931, construed.....	201
When collectible.....	390
TRUST FUNDS:	
Investment of.....	169
TRUSTEES, SCHOOL:	
How selected.....	607
TYPEWRITERS:	
Purchase of, by Counties for R. F. C.....	308
TREASURER, COUNTY:	
Bond of.....	161
County warrants, limitation of actions.....	485
Fine and Forfeiture Fund, claims against.....	592
Liability, when Commissioners Court designates depository.....	295
Payment warrants drawn by order Commissioners Court.....	184
Transfer of various county funds to general funds.....	230
Unclaimed witness fees, disposition of.....	631
TREASURER, STATE:	
Certificated warrants, payment of.....	110
“U”	
U. S. GOVERNMENT:	
Gasoline tax.....	298
Taxability of personal property, on reservation of.....	408

UTILITIES, PUBLIC:

Inspection and supervision fees of, discussed.....	372
--	-----

"V"

VETERANS:

Confederate, widow of, pensions.....	567
Exemption, Dentist license.....	89
Fee, Probate Judge appointing guardian for.....	60
Motor Carrier Act 1932, license tax, not exempt.....	128
Uniform Guardianship Act 1931, discussed.....	23, 79
World War, exemption ad valorem taxation.....	578
World War, poll tax exemption.....	151

VOTERS:

Absentee ballots, how forwarded to.....	543
Age must be to vote.....	498
Assisting to mark ballots.....	565
Meetings of Board of Registrars, when held.....	443
Notice as to registration of.....	515
Payment of poll tax after registration.....	10
Persons coming 21 years of age after October 1, 1932.....	10
Poll tax, how paid.....	633

(See also Elections and Absentee Ballots)

"W"

WARRANTS:

Certificated, discussed.....	110
Counties, issuance of, interest bearing.....	541
Counties, limitation of action on.....	303, 485
County Treasurers responsibility in paying.....	184
Disposition of interest on, when held by schools.....	500
Of Cities and Counties, ad valorem taxation.....	198
School, cancellation of.....	496
School, issuance of.....	228
State, issuance of by Auditor.....	3

WATERS:

Public, defined.....	326
----------------------	-----

WITNESSES:

Certificate of, when lost, how may be paid.....	379
Fee of clerk issuing subpoenas.....	19
Fees, when unclaimed, disposition of.....	631
Pay of, when subpoena not served.....	6